

OFFICE OF THE FRESNO CITY ATTORNEY  
ANDREW N. JANZ, City Attorney, State Bar No. 287672  
[andrew.janz@fresno.gov](mailto:andrew.janz@fresno.gov)  
BRANDON M. COLLET, Chief Assistant City Attorney, State Bar No. 272056  
[brandon.collet@fresno.gov](mailto:brandon.collet@fresno.gov)  
AMANDA B. FREEMAN, Special Assistant City Attorney, State Bar No. 285614  
[amanda.freeman@fresno.gov](mailto:amanda.freeman@fresno.gov)  
2600 Fresno Street  
Fresno, CA 93721-3620  
Telephone: (559) 621-7500

ALESHIRE & WYNDER, LLP  
ANTHONY R. TAYLOR, State Bar No. 208712  
[ataylor@awattorneys.com](mailto:ataylor@awattorneys.com)  
MICHAEL R. LINDEN, State Bar No. 192485  
[mlinden@awattorneys.com](mailto:mlinden@awattorneys.com)  
2440 Tulare Street, Suite 410  
Fresno CA 93721  
Telephone: (550) 445-1580  
Facsimile: (949) 223-1180

Attorneys for Respondents CITY OF FRESNO  
and FRESNO CITY COUNCIL

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF FRESNO**

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

Petitioners,

v.

THE CITY OF FRESNO, and THE FRESNO  
CITY COUNCIL,

Respondents.

Case No. 23CECG04744

**RESPONDENTS' OPPOSITION TO  
PETITIONERS' SECOND MOTION FOR  
JUDGMENT**

*[Filed Concurrently with Declaration of  
Michael R. Linden; Request for Judicial  
Notice; and Evidentiary Objections in Support  
of Respondents' Opposition to Petitioners'  
Second Motion for Judgment]*

**Date: December 3, 2025**  
**Time: 1:30 p.m.**  
**Dept.: 97D**

The Hon. Robert M. Whalen, Jr.

Action Filed: November 15, 2023  
Trial Date: TBD

///

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
INTRODUCTION.....	1
STATEMENT OF THE FACTS.....	3
ARGUMENT .....	4
I.    PETITIONERS’ ACTION IS MOOT.....	4
II.   THE PETITION IS TIME BARRED FOR ALL BUDGET CYCLES BEFORE THE FY 2024 BUDGET THAT WAS APPROVED IN JUNE 2023 .....	7
III.  TURNING TO THE MERITS OF THE CASE, THE MAYOR HAS JURISDICTION OVER THE CITY BUDGET AND A COUNCIL AD HOC COMMITTEE FOR THE BUDGET IS NOT A STANDING COMMITTEE.....	8
A.    Petitioners Confuse The Broader Powers Of A City Council In The Council- Manager Form Of Municipal Government With The Limited Powers Of A City Council In A Strong-Mayor Form Of Government Like The City Of Fresno. ....	9
B.    Petitioners’ Arguments In This Case Are Without Merit Because Of The Court Of Appeal Decision In <i>Taxpayers for Livable Communities v. City of</i> <i>Malibu</i> . ....	11
C.    The California Attorney General’s Opinion Cited By Petitioners Is Distinguishable From The Facts Of This Case. ....	12
D.    Each Fiscal Year Budget Cycle Is Different, And Each Council President Who Makes Appointments To Ad Hoc Committees Serves A One Year Term, And Thus Petitioners’ Contention Of An Ongoing Standing Committee From 2018 to Now Is Baseless. ....	14
CONCLUSION .....	15

**TABLE OF AUTHORITIES**

**Page(s)**

**State Cases**

<i>California Alliance for Utility etc. Education v. City of San Diego,</i> (1997) 56 Cal.App.4th 1024.....	5, 6
<i>Center for Local Government Accountability v. City of San Diego,</i> (2016) 247 Cal.App.4th 1146.....	4, 6
<i>Freedom Newspapers, Inc. v. Orange County Employees Retirement System,</i> (1993) 6 Cal.4th 821.....	8
<i>Giest v. Sequoia Ventures, Inc.,</i> (2000) 83 Cal.App.4th 300.....	7
<i>Korean Philadelphia Presbyterian Church v. California Presbytery,</i> (2000) 77 Cal.App.4th 1069.....	4, 7
<i>Norgart v. Upjohn Co.,</i> (1999) 21 Cal.4th 383.....	8
<i>Shapiro v. San Diego City Council,</i> (2002) 96 Cal.App.4th 904.....	4, 5, 6
<i>Taxpayers for Livable Communities v. City of Malibu,</i> (2005) 126 Cal.App.4th 1123.....	11

**State Statutes**

Civ. Code, § 3532.....	13
Gov. Code §§ 54960.2, subd. (c).....	5
Gov. Code, § 54952, subd. (b) .....	8, 13
Gov. Code, § 54960.2, subd. (a)(1)-(2).....	8
Gov. Code, § 54960.2, subd. (a)(2).....	2, 7
Gov. Code, §§ 34855, 36501, 36801.....	9

1 Respondents, CITY OF FRESNO (“City”) and the FRESNO CITY COUNCIL (“Council”)
2 hereby submit the following Opposition to the Second Motion for Judgment (“Motion”) of
3 Petitioners AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA and FIRST
4 AMENDMENT COALITION (collectively, “Petitioners”) as to their Verified Petition for
5 Peremptory Writ of Mandate and Complaint for Injunctive and Declaratory Relief (“Petition”), and
6 as the Respondents’ brief in this matter for the hearing on the merits on December 3, 2025. For the
7 reasons set forth below, Respondents respectfully request that the Petition be dismissed, with
8 prejudice and that judgment be entered in favor of Respondents and against Petitioners.

### 9 INTRODUCTION

10 Petitioners allege that less than a quorum of the Fresno City Council, an ad hoc committee
11 of three (of seven) city councilmembers that advised on budgetary matters during fiscal year
12 budgetary cycles since the Fiscal Year (“FY”) 2019 budget (the “budget committee” or “budget
13 committees”) violated the open meeting requirements of the Ralph M. Brown Act (“Brown Act”)
14 through alleged secret budget meetings before the City budget was approved at a public hearing.
15 During the FY 2024 budget approval process in May and June 2023, five months before this lawsuit
16 was filed, public hearings occurred on May 18, 2023, June 5, 2023, June 6, 2023, June 7, 2023, June
17 8, 2023, June 14, 2023, June 15, 2023 and June 22, 2023, before the FY 2024 budget was approved
18 at the public hearing on June 22, 2023.<sup>1</sup>

19 In an attempt to support their baseless allegations that there was a lack of transparency with
20 the City’s budget approval process, Petitioners claim in their motion (and in their attorney’s
21 statements to the media<sup>2</sup> about this case) that e-mails from city staff (who had no firsthand
22 knowledge of the ad hoc budget meetings at issue in this case), somehow allegedly “prove” that

23
24 <sup>1</sup> See City’s Request for Judicial Notice (“RJN”) No. 10

25 <sup>2</sup> Petitioners’ attorney, David Loy, made numerous statements to Fresno Land for its article
26 concerning this lawsuit on August 8, 2025, including: “It does very much look like, according to
27 emails that we obtained in discovery, that the staff were attempting to retroactively manufacture an
28 end date of the budget committee,” Loy said. “It’s very troubling that it looks like they may have
been trying to cover their tracks.” [https://fresnoland.org/2025/08/08/fresno-brown-act-budget-
lawsuit/](https://fresnoland.org/2025/08/08/fresno-brown-act-budget-lawsuit/)

1 there was a violation of the Brown Act. Petitioners have grossly misstated the significance of these  
2 e-mails by city staff and claim that city staff were attempting to retroactively manufacture an end  
3 date of an ad hoc budget committee. Petitioners' entire argument in this case relies on speculation  
4 and irresponsible misrepresentations about the motives of city staff and city officials. Petitioners  
5 have not met and cannot meet their burden of proof in this case.

6       Additionally, the applicable statute of limitations under the Brown Act provides that an  
7 interested person "may file an action to determine the applicability of this chapter to past actions  
8 ...only if" a cease and desist letter is sent to the legislative body "within nine months of the alleged  
9 violation." (Gov. Code, § 54960.2, subd. (a)(2).) Thus, the above FY 2024 budget approval process  
10 in May and June 2023, is the only fiscal year budget cycle at issue in this case that is within the  
11 applicable statute of limitations. Budget cycles before FY 2024 are irrelevant because those budget  
12 cycles were completed more than nine months before a cease and desist letter was sent to the City  
13 alleging a violation of the Brown Act concerning the City's budget approval process.

14       Moreover, this lawsuit is moot. Petitioners have offered no evidence of violations currently  
15 occurring and Petitioners cannot do so because a budget ad hoc committee was not formed by the  
16 Council President for either of the past two fiscal year budget cycles. Any alleged violation of the  
17 Brown Act before the City Council approved the FY 2024 budget was cured when the City Council  
18 conducted eight public hearings before approving the FY 2024 budget on June 22, 2023. As such,  
19 this case is moot and should be dismissed.

20       Finally, Petitioners' lawsuit is meritless because the City of Fresno has a Mayor-Council (or  
21 "Strong Mayor") form of government per the Fresno City Charter ("Charter") and not a Council-  
22 Manager form of government. The City Manager reports directly to the Mayor, and not to the City  
23 Council. The Council has no jurisdiction to direct the Mayor and City Manager's preparation of the  
24 budget each fiscal year.

25       There is no authority for the proposition argued by Petitioners in this case that if the Council  
26 President forms an ad hoc committee for one budgetary cycle and then a subsequent Council  
27 President forms an ad hoc committee during a different fiscal year's budgetary cycle that a standing  
28 committee is created. Each fiscal year's budget cycle is different as a matter of law because the

1 City must approve a new budget in June of each fiscal year. Each fiscal year's budget is different  
2 and thus there cannot be a standing committee as alleged by Petitioners in this case.

3 As such, Petitioners' motion must be denied.

4 **STATEMENT OF THE FACTS**

5 Under Fresno's Charter and Municipal Code ("FMC"), the City operates under a Mayor-  
6 Council form of government, where the Councilmembers are elected by district and the Mayor is  
7 separately elected at-large. (See RJN Nos. 1-2, 4, 6 [Charter §§ 204, 301, 1503; FMC § 2-101].)  
8 Unlike the Council-Manager form of municipal government, in Fresno the City Manager is  
9 appointed by the Mayor and serves at the pleasure of the Mayor. (RJN No. 8 [Charter §§ 700-707].)

10 For the budget, the Mayor and the Council have separate roles. The Mayor oversees the  
11 preparation of the budget each fiscal year (ending June 30). (RJN Nos. 3-4 [Charter §§ 400, 1201-  
12 1203].). Each department head furnishes to the Mayor "estimates of revenue and expenditures,"  
13 which are reviewed and may be revised. (RJN No. 4 [Charter § 1202].). The proposed budget is  
14 then submitted to the Council "[a]t least thirty days prior to the beginning of each fiscal year, ..." (RJN No. 4 [Charter § 1203].). However, "[t]he Mayor shall have power of veto in all actions of  
15 Council relating to the budget, including line item budgetary veto authority over all programs and  
16 budgetary units," which includes "the ability to reduce or eliminate the fiscal year funding to any  
17 program or budget unit." (RJN No. 3 [Charter § 400(f)].)

18  
19 The Council reviews the proposed budget and makes revisions as it may deem advisable.  
20 (RJN No. 4 [Charter § 1203].) The Council then holds public hearings on the proposed budget,  
21 considers any revisions, and adopts the budget by June 30. (RJN No. 4 [Charter §§ 1204-1205].)  
22 "At any meeting after the adoption of the budget, the Council may amend or supplement the budget  
23 by motion adopted by the affirmative votes of at least five members so as to authorize the transfer  
24 of unused balances appropriated for one purpose to another purpose or to appropriate available funds  
25 not included in the budget." (RJN No. 4 [Charter § 1206].)

26 The FY 2024 budget approval process occurred in May and June 2023, five months before  
27 this lawsuit was filed. Public hearings occurred on May 18, 2023, June 5, 2023, June 6, 2023, June  
28 7, 2023, June 8, 2023, June 14, 2023, June 15, 2023 and June 22, 2023, before the FY 2024 budget

1 was approved on June 22, 2023.

2 **ARGUMENT**

3 **I. PETITIONERS' ACTION IS MOOT**

4 Petitioners' action is moot because there is no evidence in the Motion that the alleged Budget  
5 Committee currently exists. In fact, Petitioners concede that the Budget Committee "was only in  
6 existence between January 19, 2023 until June 23, 2023" and was "dissolved ... when the Fiscal  
7 Year 2023/24 City budget was approved by the City Council" (Cappetta Decl. ¶ 79 & Ex. 79, at 1)  
8 Any alleged violation of the Brown Act before the City Council approved the FY 2024 budget was  
9 cured when the City Council conducted eight public hearings before approving the FY 2024 budget  
10 on June 22, 2023. Yet, Petitioners argue that Respondents "merely restated its unfounded position  
11 on the merits, confirming this case presents a live dispute." (Pets.' Memo. of P&A, 19:6-9, citing  
12 *Center for Local Government Accountability v. City of San Diego* (2016) 247 Cal.App.4th 1146,  
13 1156-57 [*"Center for Local Government Accountability"*].)

14 Petitioners claim that the City has a "track record of doubling down on its position that secret  
15 Budget Committee meetings are lawful," and thus a writ of mandate is necessary. (Pets.' Memo. of  
16 P&A, 19:21-22.) However, there is no evidence that the alleged Budget Committee has existed  
17 since 2018 to the present time. Petitioners admit in their Motion that no council budget committee  
18 has existed for the last two fiscal years. As discussed below, it is not enough to say that the Council  
19 could decide in the future to have another alleged Budget Committee.

20 Contrary to Petitioners' arguments, to be entitled to injunctive relief there must be a  
21 "likelihood that such conduct [will] recur in the future and that injunctive relief [is] warranted."  
22 (*Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904, 917 [*"Shapiro"*].) More  
23 specifically, an injunction "must be supported by actual evidence that there is a realistic prospect  
24 that the party enjoined intends to engage in the prohibited activity." (*Korean Philadelphia*  
25 *Presbyterian Church v. California Presbytery* (2000) 77 Cal.App.4th 1069, 1084.) Thus, for the  
26 Brown Act, there must be "a reasonable expectation the allegedly wrongful conduct will be  
27 repeated." (*Center for Local Government Accountability, supra*, 247 Cal. App. 4th at 1157.)

28 Here, Petitioners have no evidence beyond speculation, which does not suffice. A budget

1 ad hoc committee was not created for either the FY 25 or FY 26 budget cycles. Any alleged violation  
2 of the Brown Act before the City Council approved the FY 2024 budget was cured when the City  
3 Council conducted eight public hearings before approving the FY 2024 budget on June 22, 2023.  
4 Therefore, there is not a present controversy and this case is moot.

5 Because Petitioners have no evidence that a budget committee will be formed, instead they  
6 argue that since the City Attorney did not state that the Council would provide a “unconditional  
7 commitment” to cease and desist from the alleged prior past action, the matter is not moot. (See  
8 Gov. Code §§ 54960.2, subd. (c).) However, what the City Attorney said in his letter in 2023 is  
9 whether a future budget ad hoc committee could be formed was a hypothetical situation that could  
10 not be responded to. (See Petition, Ex. V.) Petitioners ignore that a city attorney cannot make  
11 statements that bind the decisions of a future council president, and cannot issue an advisory opinion  
12 when future ad hoc committees can be created by a future council president in his or her discretion.

13 Furthermore, the cases relied on by Petitioners are not on point. In *California Alliance for*  
14 *Utility etc. Education v. City of San Diego* (1997) 56 Cal.App.4th 1024 (“*California Alliance*”), the  
15 petitioners alleged that the city improperly held closed session meetings and made decisions  
16 concerning electric utility’s obligation under its franchise agreement to devote spending to placing  
17 overhead power lines underground. (*Id.* at 1026-1027.) The appellate court stated that it was  
18 “sufficient to allege there is a controversy over whether a past violation of law has occurred.” (*Id.*  
19 at 1029.) The court then found the controversy was ripe, in part, based on “the city’s failure to  
20 concede that the facts alleged by plaintiffs constitute a violation of the Brown Act or the city  
21 charter.” (*Id.* at 1030.) The court of appeal found that even after the city council had adopted the  
22 settlement, there were still problems because “more information about the cost of outside counsel  
23 was provided to the public than information about the settlement.” (*Id.* at 1031.)

24 Petitioners’ reliance on *California Alliance* is misplaced because the “live” issue with  
25 preparation of a Brown Act-compliant agenda in that case is something that must occur for every  
26 public meeting. By contrast, the type of committee described in the Petition is not required by law  
27 to be formed, and there is no evidence that it currently exists or ever will exist again.

28 Similar to *California Alliance*, Petitioners’ reliance on *Shapiro* is misplaced because in that

1 case the petitioner sought to compel the city to comply with the Brown Act with respect to “closed  
2 session discussions with its real estate negotiators, concerning the posting of agenda items and the  
3 restriction of discussion within such closed sessions to the posted agenda items.” (*Shapiro, supra*,  
4 96 Cal.App.4th at 906.) The appellate court concluded “the Brown Act authorizes injunctive relief  
5 that is based on, in relevant part, a showing of ‘past actions and violations that are related to present  
6 or future ones.’” (*Id.* at 917.) The court upheld the trial court’s injunction because the city had  
7 engaged in past practices which violated the statute and the city continued to contend it could  
8 “interpret and adjust the requirements of the Brown Act as it [saw] fit.” (*Id.*)

9 Here, Petitioners concede that there has not been a budget committee since the FY 24 budget  
10 was adopted in June of 2023, and there is no code, resolution, policy, or anything else that provides  
11 for a budget committee. Therefore, Petitioners can only speculate that another budget committee  
12 could be formed in the future, which is insufficient to overcome that this case is moot.

13 Petitioners’ argument also finds no support in *Center for Local Government Accountability*.  
14 In this case, the court of appeal addressed “a long-standing ordinance providing for only one non-  
15 agenda public comment period over the course of its two-day regular weekly meetings” that was  
16 found to violate section 54954.3. (*Center for Local Government Accountability, supra*, 247 Cal.  
17 App. 4th at 1149.) The appellate court found that the plaintiff was challenging an ongoing or  
18 threatened future action “because the adoption of the ordinance did not have a one-time or  
19 determinate effect,” but instead “the ordinance’s effect extended to every regular weekly meeting  
20 and would have continued extending to every regular weekly meeting but for the City’s  
21 postlitigation [sic] enactment of another ordinance altering the City’s practice.” (*Id.* at 1156.) The  
22 matter was not moot because “[t]he City still considers its two-day regular weekly meetings to be  
23 one continuous meeting, rather than two separate meetings, for Brown Act purposes.” (*Id.* at 1157.)

24 Similar to *California Alliance* and *Shapiro, Center for Local Government Accountability*  
25 addressed a subject (public comment) that is required for all public meetings. By contrast, there is  
26 no ordinance, resolution, or policy requiring a budget committee, or any evidence that a future  
27 committee will be formed. Thus, *Center for Local Government Accountability* is not applicable.

28 In their Motion, Petitioners were required to produce evidence demonstrating that their

1 action is not moot. However, Petitioners only surmise that a council president “could” create a  
2 budget committee in the future. An injunction “cannot issue in a vacuum based on the proponents’  
3 fears about something that may happen in the future.” (*Korean Philadelphia Presbyterian Church*  
4 *v. California Presbytery*, *supra*, 77 Cal.App.4th at 1084.) Therefore, the Motion fails to  
5 demonstrate an ongoing budget committee that violates the Brown Act, and this lawsuit must be  
6 dismissed since it is moot.

7 **II. THE PETITION IS TIME BARRED FOR ALL BUDGET CYCLES BEFORE THE**  
8 **FY 2024 BUDGET THAT WAS APPROVED IN JUNE 2023**

9 Absent from Petitioners’ Motion is any discussion of the statute of limitations for the Brown  
10 Act. Contrary to Petitioners’ claim that they can base liability for events or matters going back any  
11 length of time, the Brown Act expressly provides that an interested person “may file an action to  
12 determine the applicability of this chapter to past actions” only if a cease and desist letter is sent to  
13 the legislative body “within nine months of the alleged violation.” (Gov. Code, § 54960.2, subd.  
14 (a)(2).) Only the FY 2024 budget cycle is within the applicable statute of limitations, and thus  
15 Petitioners are time barred from challenging budget cycles before FY 2024.

16 In the Petition, the “alleged violation” occurred on June 21, 2018, when the Budget  
17 Committee was allegedly created and operated continuously thereafter as a “standing committee  
18 with continuing subject matter jurisdiction over matters related to the City’s budget.” (Petition, ¶  
19 11.) Petitioners allege that “[f]rom 2018 to the present, Respondents have consistently violated  
20 the Brown Act by holding Budget Committee meetings in secret, without advance notice, a publicly  
21 posted agenda, or opportunity for public comment.” (Petition, ¶ 97, [emphasis added].) Petitioners  
22 then allege that “Respondents’ numerous violations of the Brown Act evidence a pattern and  
23 practice of ignoring the state’s open meeting laws, ...” (Petition, ¶ 98.) Petitioners unequivocally  
24 allege that there has been a standing committee since 2018, which has violated the Brown Act since  
25 this time. (Petition, ¶¶ 11, 31, 97-98.)

26 A statute of limitations “sets the time within which proceedings must be commenced once a  
27 cause of action accrues.” (*Giest v. Sequoia Ventures, Inc.* (2000) 83 Cal.App.4th 300, 305.) A  
28 cause of action accrues at “the time when the cause of action is complete with all of its elements.”

1 (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397.) In the Petition, the “alleged violation” occurred  
2 on June 21, 2018, when the Budget Committee was allegedly created and operated continuously  
3 thereafter as a “standing committee with continuing subject matter jurisdiction over matters related  
4 to the City’s budget.” (Petition, ¶ 11.) Petitioners allege that “[f]rom 2018 to the present,  
5 Respondents have consistently violated the Brown Act by holding Budget Committee meetings in  
6 secret, without advance notice, a publicly posted agenda, or opportunity for public comment.”  
7 (Petition, ¶ 97.) In their Motion, Petitioners take several pages to describe their evidence from 2019  
8 to 2022. (See Memo. of P&A, 8:1-11:12.) That alleged evidence is irrelevant because of the  
9 applicable statute of limitations as discussed above. A “cease and desist” letter must be sent “within  
10 nine months of the alleged violation.” (Gov. Code, § 54960.2, subd. (a)(1)-(2).) However, this  
11 letter was never sent until September 5, 2023. (Petition, Ex. V.)

12 As such, Petitioners are time barred from alleging that Brown Act violations occurred during  
13 fiscal year budget cycles before the FY 2024 budget cycle.

14 **III. TURNING TO THE MERITS OF THE CASE, THE MAYOR HAS JURISDICTION**  
15 **OVER THE CITY BUDGET AND A COUNCIL AD HOC COMMITTEE FOR THE**  
16 **BUDGET IS NOT A STANDING COMMITTEE**

17 The Brown Act states that “advisory committees, composed solely of the members of the  
18 legislative body that are less than a quorum of the legislative body are not legislative bodies.” (Gov.  
19 Code, § 54952, subd. (b).) The Supreme Court has made it clear that “the less-than-a-quorum  
20 exception contained in section 54952.3” is “an exception to the definition of ‘legislative body,’ and  
21 thus one of several exceptions to the Brown Act’s open meeting requirements.” (*Freedom*  
22 *Newspapers, Inc. v. Orange County Employees Retirement System* (1993) 6 Cal.4th 821, 833.)

23 On the other hand, “standing committees of a legislative body, irrespective of their  
24 composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by  
25 charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for  
26 purposes of this chapter.” (Gov. Code, § 54952, subd. (b).)

27 Here, Petitioners cite no evidence of a fixed meeting schedule, which is why they contend  
28 that “the Budget Committee is subject to the Brown Act because it is a standing committee with

1 continuing subject matter jurisdiction over annually recurring budgetary matters.” (Memo. of P&A,  
2 17:25-25.) To create this illusion, Petitioners offer as evidence internal e-mail communications by  
3 city staff related to Budget Committee meetings and claim that there were “nearly 40 Budget  
4 Committee meetings planned and/or held throughout the years between 2018 and 2023.” (Memo.  
5 of P&A, 16:27-17:2.) As discussed below, Petitioners’ argument fundamentally misconstrues both  
6 the applicable City Charter provisions and what the Brown Act allows for ad hoc advisory  
7 committees of less than a quorum of a city council.

8       **A.     Petitioners Confuse The Broader Powers Of A City Council In The Council-**  
9       **Manager Form Of Municipal Government With The Limited Powers Of A City**  
10       **Council In A Strong-Mayor Form Of Government Like The City Of Fresno.**

11       Contrary to the allegations in the Petition, where budget committees supposedly “heard,  
12 discussed, deliberated, or took action” on matters related to the budget (Petition, ¶¶ 34, 58, 60), no  
13 such thing took place or could have taken place under the Charter. Under the City’s “Strong Mayor”  
14 form of government, the Mayor oversees the preparation of the City’s budget and has veto power in  
15 all actions of Council relating to the budget. (RJN No. 3 [Charter § 400].)

16       A “Strong Mayor” form of government is completely different from most cities where the  
17 city manager is appointed by the council in a “Council-Manager” form of government. (Gov. Code,  
18 §§ 34855, 36501, 36801.) The Fresno City Council is required to hold a public hearing on the  
19 proposed budget, and then the Council can consider further revisions on or before June 30, the  
20 deadline to adopt the budget. (RJN No. 4 [Charter §§ 1204-1205].) Throughout the budget process,  
21 the Mayor oversees the preparation of the City’s budget and has veto power over all actions of the  
22 Council related to the budget. (RJN No. 3 [Charter § 400].)

23       Under the City Charter, each budget cycle is independent and is for a distinct fiscal year.  
24 (Charter §§ 400, 1201-1203.) The Mayor’s Office prepares the budget, and until it is submitted to  
25 the Council for approval (subject to the Mayor’s veto), the Council has no jurisdiction over the  
26 process. (Charter § 1203.). After the budget is submitted for approval, a budget ad hoc committee’s  
27 role is limited to the period when the budget was being considered for approval on or before June  
28 30.

1 Furthermore, there is no provision for a budget ad hoc committee to hold regular meetings,  
2 or any meetings at all. Petitioners attempt to use internal communications by city staff to create the  
3 illusion of a standing budget committee. There is no evidence of a “standing” committee; instead,  
4 the evidence shows that various meetings took place in an “ad hoc” manner, and only for matters  
5 related to a particular fiscal year’s budget cycle.

6 Petitioners also argue that the alleged budget committee “secretly negotiated” the FY 24  
7 budget (adopted in June of 2023). (Pets.’ Memo. of P&A, 11:13-13:11.) However, none of  
8 Petitioners’ so called “evidence” demonstrates the existence of a standing committee with  
9 jurisdiction to control the City’s budget process. In fact, much of the evidence cited by Petitioners  
10 shows just the opposite. For example, Petitioners point out that one of the Councilmembers on the  
11 budget committee expressed chagrin to the City Manager (who is not controlled by the Council) that  
12 “staff added three items regarding the mid-year budget to a public Council presentation before the  
13 Budget Committee could first privately discuss them.” (Pets.’ Memo. of P&A, 11:23-28.) This  
14 only goes to show that until the fiscal year’s budget was discussed at public hearings, neither the  
15 Council nor the ad hoc budget committee had any control (or, “jurisdiction”) over the Mayor and  
16 the City Manager for the budget. (Charter, §§ 700-707.)

17 For these same reasons, Petitioners are fundamentally incorrect when they contend that in  
18 June of 2023, “the Council directed the City Manager to review quarterly revenue reports with the  
19 Budget Committee on a ‘standing’ basis.” (Pets.’ Memo. of P&A, 12:8-15.) The Council cannot  
20 direct the City Manager to do anything because the City Manager reports directly to the Mayor and  
21 not to the City Council. (RJN No. 8 [Charter, §§ 700-707].)

22 Therefore, there was no “directive” by any ad hoc budget committee to the City Manager or  
23 Mayor at any time because that is impossible under the City Charter in the City’s Strong-Mayor  
24 form of government. No evidence has been submitted to the contrary. In addition, there is no basis  
25 to claim that a budget committee “secretly negotiated” the FY 24 budget, or any budget. In fact,  
26 Petitioners admit that “Councilmembers voted on more than 100 motions to amend the Mayor’s  
27 proposed budget to fund or alter funding for various projects on June 14, 2023.” (Memo. of P&A,  
28 12:16-17.) Each one of these motions was voted on by councilmembers at public hearings, including

1 by councilmembers who were not part of the alleged budget committee. As such, simply because  
2 budget ad hoc committee meetings took place during May and June of 2023 does not mean there  
3 was a standing committee, as these meetings were ad hoc (less than a quorum) and for the limited  
4 purpose and time period for that fiscal year's budget approval.<sup>3</sup>

5 **B. Petitioners' Arguments In This Case Are Without Merit Because Of The Court**  
6 **Of Appeal Decision In *Taxpayers for Livable Communities v. City of Malibu*.**

7 A fatal flaw with Petitioners' theory of a standing committee in this case with jurisdiction  
8 over the City's budget is that Petitioners' "novel" legal theory is contradicted by authority directly  
9 on point. In *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123  
10 ("*City of Malibu*"), the Coastal Commission released a draft of one component of the Malibu's Local  
11 Coastal Program, a Land Use Plan ("LUP"). *Id.* at 1125.) Thereafter, two councilmembers "held a  
12 number of private meetings with various individuals, constituents, and city staff to 'go over the  
13 City's response to the Coastal Commission's draft LUP.'" (*Id.* at 1125-1126.) At a council meeting,  
14 the two councilmembers submitted their recommendations on the draft LUP. *Id.*, at 1126.) The  
15 Court of Appeal found that even though these councilmembers were the sole members for the  
16 council's standing committee for land use and planning, this committee did not have jurisdiction  
17 over Malibu's response to the Coastal Commission. (*Id.* at 1127-1128.) Additionally, the  
18 councilmembers could not bind the city council because the council kept for itself all future  
19 decisions involving the LUP. (*Id.* at 1128-1129.)

20 The same reasoning from *City of Malibu* applies here. No budget committee had any  
21 jurisdiction when the FY 2024 budget was being prepared. Petitioners cannot make conclusory  
22 allegations of a committee having "the final word." Indeed, the Court of Appeal in *City of Malibu*  
23 held that since the two councilmembers there were found not to be a legislative body (or "other  
24 body"), the allegations that the two councilmembers had "decisionmaking power," and that the  
25

---

26 <sup>3</sup> Petitioners claim that the City Clerk "effectively" admitted that the budget committee's meetings  
27 in June of 2023 violated the Brown Act. (Pets.' Memo. of P&A, 12:24-13:4.) Even if the opinion  
28 of someone is actually evidence (it is not), there was no admission because the City Clerk stated  
that the budget committee "should be changed to a broader purpose Brown Act Committee."

1 council “rubber-stamped” the recommendations of the two councilmembers were false. (*Id.* at  
2 1129.) The same is true here.

3       C.     The California Attorney General’s Opinion Cited By Petitioners Is  
4               Distinguishable From The Facts Of This Case.

5       Petitioners cite a California Attorney General Opinion from 1996 that contains dissimilar  
6 facts compared to this case. (Memo. of P&A, 16:9-22.) In its opinion, the California Attorney  
7 General’s office considered whether a water district’s committee is subject to the Brown Act “if the  
8 committee has the responsibility of providing advice concerning budgets, audits, contracts, and  
9 personnel matters to and upon request of the legislative body.” (Opinion, at p. 1.) The district’s  
10 seven-member board established a subcommittee of three members to advise the board on  
11 administrative matters as needed. (Op. at p. 2.) This committee did not have a fixed meeting  
12 schedule but “generally” met monthly, operating under the following rule:

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

17  
18       Quoting the Webster’s Dictionary, the Attorney General noted that a “standing committee”  
19 is “a permanent committee of a legislative body,” and that “‘Permanent’ may be commonly defined  
20 as ‘to endure, remain.’” (Op. at p. 4, quoting Webster’s Third New Internat. Dict. (1971) p. 1683.)  
21 In finding that a standing committee existed, the California Attorney General found that “this  
22 subcommittee **does not have a limited term**, and it **is not** an ad hoc committee charged with  
23 **accomplishing a specific task in a short period of time.**” (Opinion, at p. 4 [emphasis added].)

24       There are numerous material differences between the committee in this California Attorney  
25 General opinion and what the Petition describes here. Instead of a committee to advise on certain  
26 aspects of an annual budget (as Petitioners allege here), the standing committee in the above Opinion  
27 provided advice concerning “budgets, audits, contracts, and personnel matters ...” (Opinion, at p.  
28 1.) Unlike the City’s fiscal year budget, which ends by June 30 annually, matters such as “audits,

1 contracts, and personnel matters” are not so delineated and thus do not have limited terms.

2 What Petitioners’ so-called “evidence” shows is the creation of new ad hoc committees that  
3 handled specific tasks within the period of an annual fiscal year’s budget. This is far different than  
4 the standing committee in the Opinion, which had no defined limited scope or duration. Therefore,  
5 this Opinion is not helpful to Petitioners.

6 Another theory promulgated by Petitioners is that “[t]he City Council never dissolved the  
7 Budget Committee,” and treated it as a standing committee” because in January 2023 the Council  
8 approved the recommendation that the “Budget Sub-Committee ... be a standing committee.”  
9 (Pets.’ Memo. of P&A, 17:8-11.) Petitioners’ argument ignores that each fiscal year has a different  
10 budget, and each budget process ends by June 30. (Charter §§ 1201, 1205.) Since the task for any  
11 budget ad hoc committee is connected to a particular fiscal year’s budget cycle, there is no reason  
12 for formal dissolution. (See Civ. Code, § 3532 [“The law neither does nor requires idle acts.”].)

13 Furthermore, as all of Petitioners’ so-called “evidence” shows, the Council never treated any  
14 budget ad hoc committee as a standing committee because there were never any set meetings, and  
15 the committee operated on an ad hoc basis. While Petitioners have contended that the budget ad  
16 hoc committee has addressed post-adoption amendments to the budget, this is not evidence of a  
17 standing committee for the budget generally given that to amend or supplement the budget after its  
18 adoption takes a supermajority vote of five councilmembers. (Charter § 1206.) Therefore, if an ad  
19 hoc committee for a fiscal year’s budget cycle reviews a matter related to a budget amendment, this  
20 does not remove the temporary nature of the ad hoc committee’s assignment. Nor does that ad hoc  
21 committee have an alleged “final say” since a supermajority vote of at least five councilmembers at  
22 an agendized public meeting is required to approve a budget amendment, as set forth above.

23 The Brown Act expressly allows temporary advisory committees of less than a quorum of a  
24 city council to be formed and function without the necessity of noticed public meetings. (Gov.  
25 Code, § 54952, subd. (b).) The Brown Act provides public agencies with flexibility without  
26 removing the public’s right to be notified when a matter is going before the actual decision-making  
27 body. There is no evidence in this case that the ad hoc committees described in the Petition met  
28 regularly, during a set meeting schedule, and the purpose for each of the ad hoc committees ended

1 when the fiscal year's budgets were adopted and/or amended. Grouping together temporary  
2 committees does not create a "standing" committee. Petitioners' arguments must be rejected.

3       **D. Each Fiscal Year Budget Cycle Is Different, And Each Council President Who**  
4       **Makes Appointments To Ad Hoc Committees Serves A One Year Term, And**  
5       **Thus Petitioners' Contention Of An Ongoing Standing Committee From 2018**  
6       **to Now Is Baseless.**

7  
8       There is no authority for the proposition argued by Petitioners in this case that if the Council  
9 President forms an ad hoc committee for a fiscal year's budgetary cycle and then a subsequent  
10 Council President forms an ad hoc committee for a different fiscal year's budgetary cycle that an  
11 ongoing standing committee is created. (FMC, section 2-316 [All special committees shall be  
12 appointed by the Council President].)

13       Also, each budget cycle is different as a matter of law because the City must approve a  
14 budget in June of each year. Each fiscal year has a different City budget, and each budget process  
15 ends by June 30. (Charter §§ 1201, 1205.)

16       In addition, Section 501 of the City Charter provides: "[o]n the first Tuesday after the first  
17 Monday in January, the Council shall elect a President of the Council from among its members to  
18 serve for a one-year term. The President of the Council shall be the presiding officer of the  
19 Council." (RJN No. 9.) Each fiscal year's budget is different and each council president that is  
20 elected for a one-year term has discretion whether or not to form a council ad hoc committee. Thus,  
21 there is not a continuous standing committee, as alleged by Petitioners in this case, from 2018 to  
22 now with decision making power over each City budget (as alleged by Petitioners) and that  
23 transcends all council presidents that are appointed to one-year terms and all fiscal years.

24 ///

25 ///

26 ///

27 ///

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

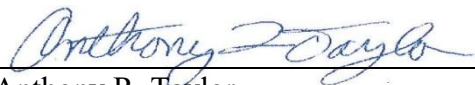
**CONCLUSION**

Based on the foregoing reasons, Respondents respectfully request that the Court deny  
Petitioners' Motion in its entirety, and dismiss the Petition, with prejudice.

Respectfully submitted,

DATED: September 3, 2025

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

By:   
Anthony R. Taylor  
Attorneys for Respondents

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 September 3, 2025, I served true copies of the following document(s) described as  
8 **RESPONDENTS' OPPOSITION TO PETITIONERS' SECOND MOTION FOR JUDGMENT** on the interested parties in this action as follows:

9 Angélica Salceda, Esq.  
10 Shaila Nathu, Esq.  
11 Lauren M. Davis, Esq.  
12 AMERICAN CIVIL LIBERTIES UNION  
13 FOUNDATION OF NORTHERN CALIFORNIA, INC.  
14 39 Drumm Street  
San Francisco, CA 94111  
Telephone: (415) 621-2493  
E-mail: [asalceda@aclunc.org](mailto:asalceda@aclunc.org)  
[snathu@aclunc.org](mailto:snathu@aclunc.org)  
[ldavis@aclunc.org](mailto:ldavis@aclunc.org)

*Attorneys for Plaintiff*  
AMERICAN CIVIL LIBERTIES  
UNION OF NORTHERN  
CALIFORNIA

15 David Loy, Esq.  
16 FIRST AMENDMENT COALITION  
17 534 4<sup>th</sup> Street, Suite B  
San Rafael, CA 94901-3334  
Telephone: (415) 460-5060  
E-mail: [dloy@firstamendmentcoalition.org](mailto:dloy@firstamendmentcoalition.org)

*Attorneys for Plaintiff*  
FIRST AMENDMENT COALITION

18 Ann Cappetta, Esq.  
19 FERGUSON LAW PC  
20 1816 Fifth Street  
Berkeley, CA 94710  
Telephone: (510) 548-9005  
E-mail: [annie@fergusonlawpc.org](mailto:annie@fergusonlawpc.org)

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  
23 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.

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

26 Executed on September 3, 2025, at Fresno, California.

27   
28 Shelly Ramirez