

1 David I. Horowitz, P.C. (SBN 248414)  
Zachary W. Byer (SBN 301382)  
2 KIRKLAND & ELLIS LLP  
333 South Hope Street, 29th Floor  
3 Los Angeles, CA 90071  
Telephone: (213) 680-8400  
4 Facsimile: (213) 680-8500  
david.horowitz@kirkland.com  
5 zachary.byer@kirkland.com

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Orange  
**08/21/2019** at 01:39:00 PM  
Clerk of the Superior Court  
By Julie Carney, Deputy Clerk

6 Peter J. Eliasberg (SBN 189110)  
AMERICAN CIVIL LIBERTIES UNION OF  
7 SOUTHERN CALIFORNIA  
1313 W. 8th Street  
8 Los Angeles, CA 90017  
Telephone: (213) 977-9500  
9 peliasberg@aclusocal.org

10 Brendan Hamme (SBN 285293)  
AMERICAN CIVIL LIBERTIES UNION OF  
11 SOUTHERN CALIFORNIA  
1851 East 1st Street, Suite 450  
12 Santa Ana, CA 92705  
Telephone: (714) 450-3963  
13 bhamme@aclu-sc.org

14 *Attorneys for Plaintiff-Petitioner*  
PEOPLE'S HOMELESS TASK FORCE

15  
16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
17 **FOR THE COUNTY OF ORANGE**

18 PEOPLE'S HOMELESS TASK FORCE,  
19  
20 Plaintiff-Petitioner,

21 v.

22 COUNTY OF ORANGE, ORANGE  
23 COUNTY BOARD OF SUPERVISORS,

24  
25 Defendants.

Case No. 30-2019-01062485-CU-CR-CJC  
Assigned for all purposes to:  
Judicial Officer Sheila Fell  
Department C-25

**ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFF-  
PETITIONER'S MOTION FOR  
PRELIMINARY INJUNCTION**

Date: June 12, 2019  
Time: 10:00 AM  
Place: Department C-25  
Reservation: 73028861  
Complaint Filed: April 9, 2019

1 On June 12, 2019 in Department C25 of the Orange County Superior Court, Plaintiff-  
2 Petitioner People’s Homeless Task Force moved for a preliminary injunction preventing  
3 Defendants County of Orange and Orange County Board of Supervisors from violating Plaintiff-  
4 Petitioner’s and the public’s constitutional and statutory rights. Zachary W. Byer of Kirkland &  
5 Ellis LLP and Brendan Hamme of the American Civil Liberties Union of Southern California  
6 appeared on behalf of Plaintiff-Petitioner People’s Homeless Task Force, and Rebecca S. Leeds  
7 and Adam C. Clanton appeared on behalf of Defendants County of Orange and Orange County  
8 Board of Supervisors.

9 The Court has considered Plaintiff-Petitioner’s Motion for Preliminary Injunction and the  
10 pleadings in support and in opposition, and has heard oral argument of counsel. For the reasons  
11 set forth in the Court’s Minute Order, dated July 3, 2019, and for good cause therefor,  
12 Defendants’ unopposed requests for judicial notice are **GRANTED**, and Plaintiff-Petitioner’s  
13 Motion is **GRANTED in part** and **DENIED in part** as follows:

- 14 • **DENIED** as to Orange County Board of Supervisors Rule of Procedure 23. The Court  
15 finds that Plaintiff-Petitioner did not meet its burden of showing it is likely to prevail on  
16 the merits of this Brown Act claim. Plaintiff-Petitioner contends that there was a decrease  
17 in public comments after the Rule changed in February of 2018, but, based on the  
18 evidence presented, it is possible that the decrease was due to factors other than the  
19 moving of the general public comment period from the beginning to the end of Board  
20 meetings. Furthermore, the Court finds that balancing the potential harm weighs in favor  
21 of Defendants.
- 22 • **DENIED** as to Orange County Board of Supervisors Rule of Procedure 44. The Court  
23 finds that Plaintiff-Petitioner did not meet its burden of showing it is likely to prevail on  
24 the merits of this First Amendment and Brown Act claim. Based on the evidence  
25 presented, Plaintiff-Petitioner did not show that a speaker was required to provide a real  
26 name in order to speak, or that the Brown Act was violated due to a person not having the  
27 opportunity to respond to another speaker’s comments or by requiring a cutoff time for a  
28

1 speaker to provide a request form. Furthermore, the Court finds that balancing the  
2 potential harm weighs in favor of Defendants.

3 • **GRANTED** as to Orange County Board of Supervisors Rule of Procedure 46. Rule 46  
4 requires members of the public to address “[a]ll remarks and questions” to “the Board as a  
5 whole” and “not to any individual Board member,” and also requires a speaker to obtain  
6 permission from the Board’s Chair before asking any “question” of any “Board or staff  
7 member.” But Rule 46 provides no guidelines or objective standards for the Chair in  
8 determining whether to grant permission to a speaker to address an individual Board or  
9 staff member. Nor have Defendants offered any evidence showing how the Chair  
10 determines whether to permit a speaker to address an individual Board or staff member, or  
11 any evidence contradicting Plaintiff-Petitioner’s showing that the Chair enforces the  
12 prohibition against those critical of the Board and grants permission to those who are  
13 complimentary. The Court finds that Plaintiff-Petitioner has met its burden of showing it  
14 is likely to prevail on its claim that Rule 46 is unreasonable, and in turn, unconstitutional.  
15 Furthermore, the Court finds that balancing the potential harm weighs in Plaintiff-  
16 Petitioner’s favor.

17 • **DENIED** as to Orange County Board of Supervisors Rule of Procedure 47. Based on the  
18 evidence presented, the Court finds that Plaintiff-Petitioner has not shown a likelihood of  
19 prevailing on the merits of this Brown Act and First Amendment claim. The Chair is in  
20 the best position to determine whether the number of speakers, in conjunction with what is  
21 on the agenda for that meeting, would prevent the Board from accomplishing its business  
22 in a reasonably efficient manner should speaking time not be reduced from three minutes.  
23 Furthermore, the Court finds that balancing the potential harm weighs in favor of  
24 Defendants.

25 • **DENIED** as to Orange County Board of Supervisors Rule of Procedure 48. The Court  
26 finds that Plaintiff-Petitioner did not meet its burden of showing a likelihood of prevailing  
27 on the merits of this Brown Act claim that Rule 48 violates the California Public Records  
28

1 Act (“CPRA”) or CPRA’s purpose. Furthermore, the Court finds that balancing the  
2 potential harm weighs in favor of Defendants.

3 • **GRANTED** as to the Orange County Records Management Policy (“Records Policy”).  
4 Neither the CPRA nor the Brown Act includes retention exemptions based on the  
5 definition of “transitory records” used in the Records Policy. Government Code Section  
6 26202 sets a two-year retention period for documents prepared or received in any manner  
7 other than pursuant to a state statute or county charter. Defendants fail to establish that  
8 the documents encompassed by the Records Policy’s definition of “transitory records” are  
9 not required to be preserved by law, or that the destroyed records are preserved in  
10 accordance with Gov. Code § 26205.1(b). The Court finds that Plaintiff-Petitioner has  
11 met its burden of showing a likelihood of prevailing on the merits of this writ claim.  
12 Furthermore, the Court finds that balancing the harm weighs in favor of Plaintiff-  
13 Petitioner.

14 **IT IS HEREBY ORDERED:**

15 1. Defendants, their employees, agents, successors, assigns, and those acting in  
16 concert with them are preliminarily enjoined from enforcing the following portion of Orange  
17 County Board of Supervisors Rule of Procedure 46: “All remarks and questions shall be  
18 addressed to the Board as a whole and not to any individual Board member. No question shall be  
19 asked of any Board or staff member without first obtaining permission of the Chair”; and,

20 2. Defendants, their employees, agents, successors, assigns, and those acting in  
21 concert with them are preliminarily enjoined from enforcing the Orange County Records  
22 Management Policy that authorizes the destruction of “transitory records” at “any time.”

23 IT IS SO ORDERED.

24 

25 Dated: **August 21, 2019**

26 The Honorable Sheila Fell  
27 Judge of the Superior Court

28