

JAN 30 2012

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SAN DIEGO

14 NORTH COUNTY REGIONAL CENTER

16 DEMETRIO GOMEZ, GIOVANNI CAMPOS,
 OSCAR GOMEZ, MATEO SALDIVAR,
 17 SAMUEL SALDIVAR, and STATE
 BUILDING AND CONSTRUCTION TRADES
 18 COUNCIL OF CALIFORNIA,

19 Plaintiffs,

20 vs.

21 CITY OF ESCONDIDO; ESCONDIDO CITY
 COUNCIL; SAM ABED, in his official
 22 capacity as Mayor of the City of Escondido;
 MARIE WALDRON, in her official capacity as
 23 Deputy Mayor of the City of Escondido; and
 24 MARSHA WHALEN, in her official capacity
 as City Clerk for the City of Escondido,

25 Defendants.

Case No. 37-2011-00060480-CU-CR-NC
 Judge Earl H. Maas, III, Dept. N-28

**NOTICE OF DEMURRER AND
 DEMURRER TO COMPLAINT;
 MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT THEREOF**

Hearing:

Date: March 16, 2012
 Time: 1:30 p.m.
 Dept: N-28

Date Action Filed: December 20, 2011
 Trial Date: None Set

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 16, 2012, at 1:30 p.m., or as soon thereafter as the matter may be heard in Department N-28 of the above-entitled Court, located at 325 S. Melrose Dr., Vista, CA 92081, Defendants City of Escondido, Escondido City Council, Sam Abed, Marie Waldron, and Marsha Whalen (collectively, "Defendants") will and hereby do generally demur to Plaintiffs' Complaint For Declaratory and Injunctive Relief Under the California Voting Rights Act of 2001 and the Federal Voting Rights Act of 1965 ("Complaint").

Such demurrer is made on the following grounds:

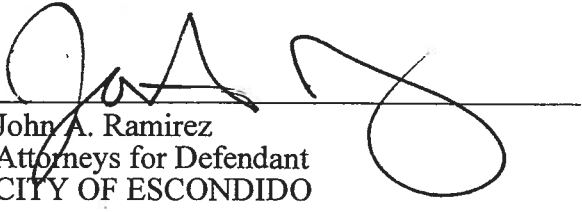
(i) The alleged first cause of action fails to state a cause of action on behalf of Plaintiff State Building and Construction Trades Council of California ("State Council"), because the claim belongs to someone else. (Code Civ. Proc. § 430.10(e).)

(ii) The alleged second cause of action fails to state a cause of action on behalf of Plaintiff State Council, because the claim belongs to someone else. (Code Civ. Proc. § 430.10(e).)

This demurrer is based on this notice of demurrer, the attached memorandum of points and authorities, the pleadings and papers on file herein, any reply memorandum of points and authorities subsequently filed by Defendants, and such other and further evidence and argument as may be presented at the hearing.

Dated: January 25, 2012

RUTAN & TUCKER, LLP
ROBERT S. BOWER
JOHN A. RAMIREZ
ALAN B. FENSTERMACHER

By: 
John A. Ramirez
Attorneys for Defendant
CITY OF ESCONDIDO

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GENERAL DEMURRER TO COMPLAINT

Defendants City of Escondido, *et. al.* (“Defendants”) demur to the both the alleged First and Second Causes of Action in the Complaint filed by Plaintiff State Building and Construction Trades Council of California (“State Council”) and individual Plaintiffs Demetrio Gomez, Giovanni Campos, Oscar Gomez, Mateo Saldivar, and Samuel Saldivar (collectively, “Plaintiffs”) on or about December 20, 2011. This demurrer is brought pursuant to Code of Civil Procedure section 430.10(e) and is based on the following grounds:

1. Plaintiffs’ First Cause of Action, as it relates to the State Council, does not state facts sufficient to constitute a cause of action against Defendants due to State Council’s lack of standing to sue.

2. Plaintiffs’ Second Cause of Action, as it relates to the State Council, does not state facts sufficient to constitute a cause of action against Defendants due to State Council’s lack of standing to sue.

Dated: January 25, 2012

RUTAN & TUCKER, LLP
ROBERT S. BOWER
JOHN A. RAMIREZ
ALAN B. FENSTERMACHER

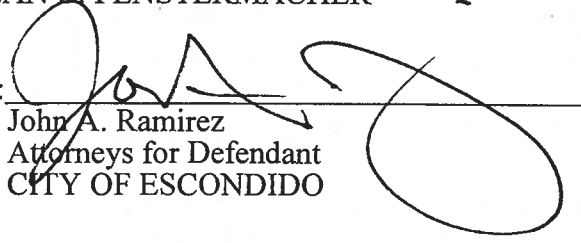
By: 
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CITY OF ESCONDIDO

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. ALLEGATIONS OF THE COMPLAINT

3 Defendant City of Escondido (“City”) is a general law city organized under the laws of the
4 State of California. (Compl. ¶ 12.) Thus, state law describes the procedures that the City must
5 follow to establish and operate its form of government. (See Gov. Code §§ 36501 *et seq.*)¹ A
6 general law city may not use a system of electing its city council by or from districts unless such a
7 system is established by an ordinance approved by the voters; *i.e.*, an at-large voting system is the
8 default voting system for all general law cities. (Gov. Code § 34871.) The City has used an at-
9 large voting system since its incorporation in 1888.

10 In an at-large system, voters of the entire jurisdiction elect the members of the city council.
11 (Elec. Code § 14026(a)(1)). (Compl., ¶¶ 1, 22.)² On December 20, 2011, Plaintiffs filed a
12 Complaint for Declaratory and Injunctive Relief alleging that the City’s longtime use of an at-
13 large system violates the California Voting Rights Act of 2001 (Elec. Code §14025 *et seq.*)
14 (“CVRA”) and the Federal Voting Rights Act of 1965 (42 U.S.C. §§ 1973 *et seq.*) (“FVRA”).
15 (Compl., ¶¶ 1, 55-66.) Specifically, Plaintiffs allege the at-large system is discriminatory and
16 operates to deny or abridge the voting rights of Latinos residing in the City on account of their
17 race or color. (Compl., ¶ 1) Plaintiffs purport to bring this action on behalf of those Latino voters.
18 (See generally, Compl.)

19 Plaintiffs include (i) five individuals, all Latino (Compl., ¶¶ 5-9), and (ii) the State
20 Building and Construction Trades Council of California (“State Council”). The State Council is a
21 “non-profit labor federation” made up of “131 local unions, 16 district labor councils, and 22 local
22 building trade councils” throughout California that represent 300,000 individuals working in the
23 building and construction trades. (Compl., ¶10.) The Plaintiffs allege that *some* members of *two*

24
25 ¹ The Government Code classifies cities as charter cities or general law cities. (Gov. Code
26 §§ 34100-34102.) Whereas charter cities derive their corporate powers directly from the
27 constitution, subject to limitations of their respective charters and enactments of the Legislature on
28 matters of statewide concern, general law cities derive their corporate powers from general laws
enacted by the Legislature. (*Irwin v. City of Manhattan Beach* (1966) 65 Cal.2d 13, 20.)

² The Complaint erroneously cites to *Government* Code section 14026(a)(1), rather than
Elections Code section 14026(a)(1).

1 *of those 169 affiliated organizations* are Latino voters residing in the City. (Compl., ¶10.) The
2 Complaint does not specifically identify any of those members or allege any approximation of the
3 number of members who are Latino voters residing in the City.

4 Plaintiffs allege only that “*part* of the State Council’s mission, as set forth in its
5 Constitution, is to protect and strengthen democratic institutions, to advance standing of affiliated
6 members in community life and affairs, and to enhance affiliate members’ voting rights under
7 state and federal law.” (Compl., ¶11 (emph. added).) The State Council does not allege what the
8 other “parts” of its mission are, but its name indicates its mission primarily involves labor and
9 economic issues.

10 The State Council attempts to show it has been harmed by vaguely alleging that: (i) it has
11 assisted individuals to register to vote, and has conducted voter education services, and therefore
12 the at-large system harms the State Council’s efforts to promote voting rights of some members of
13 its affiliates; and (ii) the City Council has pursued economic policies contrary to the interests of
14 Latino workers. (Compl., ¶11.) The State Council, however, is mainly concerned with labor and
15 economic issues, and at best is only tangentially involved in minority voting issues. Thus, its
16 attempt to plead around that reality in order to meet the CVRA and FVRA standing requirements
17 must be rejected.

18 **II. ARGUMENT**

19 If a plaintiff’s lack of standing appears on the face of the complaint or from matters
20 judicially noticeable, a general demurrer is proper, even if a cause of action may be stated in favor
21 of someone else. (*County of Fresno v. Shelton* (1998) 66 Cal.App.4th 996, 1009.) As set forth in
22 greater detail below, it is apparent from the face of the Complaint that the State Council does not
23 have standing to sue Defendants for a violation of the CVRA or the FVRA. Therefore, this
24 demurrer should be sustained as to both causes of action. (Code Civ. Proc. § 430.10(e).)

25 Moreover, the demurrer should be sustained without leave to amend. Because no
26 amendment can cure the State Council’s lack of standing to sue on the alleged causes of action, the
27 causes of action fail as a matter of law. (*See, e.g., Pan Pacific Properties v County of Santa Cruz*
28 (1978) 81 Cal.App.3d 244, 251.)

1 A. Plaintiffs' First Cause Of Action Fails Because The State Council Lacks
2 Standing Under The California Voting Rights Act

3 Defendants' demurrer to State Council's first cause of action must be sustained without
4 leave to amend because the State Council lacks standing to sue Defendants for alleged CVRA
5 violations under any theory.

6 1. The State Council Lacks Standing to Sue in its Own Right under the
7 Plain Language of the CVRA

8 The CVRA grants standing to "[a]ny *voter* who is a *member of a protected class* and who
9 *resides in a political subdivision* where a violation of sections 14027 and 14028 is alleged."
10 (Elec. Code § 14032 (emphasis added).) Even assuming that Plaintiffs have properly alleged a
11 violation of sections 14027 and 14028, the State Council is (i) not a voter, (ii) not a member of
12 protected class, and (iii) not a resident of the City. (Elec. Code § 14032.)

13 "Voter" is defined by statute to mean "any *elector* who is *registered* under [the Elections
14 code]." (Elec. Code § 359 (emphasis added).) In turn, "elector" is defined as "any *person* who is
15 a United States *citizen 18 years of age or older*. . . ." (Elec. Code § 321 (emphasis added).)
16 Further, Black's Law Dictionary defines "voter" as "[a] *person* who *engages in the act of voting*
17 [or a] person who has the *qualifications necessary for voting*." (Black's Law Dict. (8th ed. 2004)
18 p. 1608 (emphasis added).) The State Council, a non-profit labor federation, is not a "voter"
19 because it is not a person, is not a citizen 18 years of age or older, is not registered, and it does not
20 vote or possess the "qualifications necessary for voting." (Compl., ¶¶ 10-11.) (See Elec. Code
21 §§ 359, 321.)

22 A "protected class" is defined as "a class of voters who are members of a race, color or
23 language minority group, as this class is referenced and defined in the Federal Voting Rights Act
24 (42 U.S.C. Sec. 1973 *et seq.*)." (Elec. Code § 14026(d).) An organization cannot be a member of
25 a racially-defined "protected class," particularly when "protected class" is defined as "a class of
26 *voters*. . . ." (Elec. Code § 14026(d) (emphasis added).)

27 Finally, a "political subdivision" is defined as a "geographic area of representation created
28 for the provision of government services, including, but not limited to, a city. . . ." (Elec. Code

1 § 14026(c).) The State Council is not a resident of the City of Escondido. Rather, its membership
2 consists of labor organizations located all over the California, and only two of its 169 affiliates
3 operate in the City. (Compl., ¶¶ 10-11)

4 By inserting the word “voter” into the section conferring standing, the Legislature clearly
5 intended to limit standing under the CVRA to individuals, and did not include largely unaffected
6 organizations. (See Elec. Code § 14032.) No reasonable definition of “voter,” whether statutory
7 or otherwise, allows an organization to have standing in its own right under the CVRA.

8 The CVRA also precludes a claim for declaratory relief, as that requires the existence of an
9 actual, present controversy over a proper subject. (Code Civ. Proc. § 1060; *City of Cotati v.*
10 *Cashman* (2002) 29 Cal. 4th 69, 79.) The actual controversy must relate to the legal rights and
11 duties of the respective parties. (Code Civ. Proc. § 1060.) There is no standing under section
12 1060 for a group that does not have a direct legal interest. (*In re Marriage Cases* (2008) 43 Cal.
13 4th 757.) Furthermore, if a plaintiff lacks standing under the statutory scheme, there can be no
14 claim for declaratory relief, and a demurrer is properly sustained. (See *Meyer v. Sprint* (2009) 45
15 Cal. 4th 634, 641, 643.)

16 Here, the State Council alleges no actual controversy, as it clearly lacks standing under
17 CVRA statutory scheme. (See Elec. Code § 14032.) There can be no controversy necessitating
18 the declaration of rights and obligations when the State Council expressly has no rights or
19 obligations under CVRA. Thus, this demurrer must be sustained.

20 2. **The State Council Lacks Associational Standing under the CVRA**

21 An association may sometimes bring a lawsuit on behalf of its members when it does not
22 have standing in its own right. (*Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior*
23 *Court* (2009) 46 Cal. 4th 993, 1003.) However, to do so, the association must (i) meet express
24 statutory standing requirements, and (ii) meet the three-part associational standing test articulated
25 by the U.S. Supreme Court and adopted by California courts. (See *Hunt v. Washington Apple*
26 *Advertising Comm.* (1977) 432 U.S. 333, 343.) The State Council fails on both counts.

27 a. **Associational Standing is Not Permitted by the CVRA**

28 First, associations suing on behalf of members are not exempt from express statutory

1 standing requirements. (*Amalgamated Transit Union*, 46 Cal. 4th at 1005.) *Amalgamated* is
2 directly on point. There, a labor union did not have standing to sue on behalf of its members
3 under the Labor Code’s private Attorney General provision allowing an “aggrieved employee” to
4 sue. (*Id.* at 1004-1005 [citing Lab. Code § 2699].) “Aggrieved employee” was statutorily defined
5 as “any person who was employed by the alleged violator and against whom one or more of the
6 alleged violations was committed.” (*Id.*) The court held that the union had no standing, even
7 associational standing on behalf of their members: “Because plaintiff unions were not employees
8 of defendants, they cannot satisfy the express standing requirements of the act.” (*Id.* at 1005.)
9 The court further held that the express statutory provisions defining who had standing showed the
10 Legislature’s intent not to incorporate the associational standing doctrine. (*Id.* at 1004)

11 Here, State Council cannot satisfy the express standing requirements of the CVRA,
12 because it is not a voter, not a member of a protected class, and not a resident of the City, all of
13 which are “express standing requirements of the act.” (*See* Elec. Code § 14032.) Furthermore,
14 just as in *Amalgamated Transit Union*, nothing in the CVRA indicates that the associational
15 standing doctrine was incorporated into the statutory scheme.

16 **b. State Council Lacks Standing under the CVRA Even if it Could**
17 **Meet the Statutory Requirements**

18 Even if the State Council somehow satisfied the CVRA’s statutory standing requirements,
19 it still fails the relevant test for associational standing. Absent statutory restrictions, associational
20 standing exists under California and federal law when: (i) the interests the association seeks to
21 protect are germane to the organization's purpose; (ii) the association’s members would otherwise
22 have standing to sue in their own right; and (iii) neither the claim asserted nor the relief requested
23 requires the participation of individual members in the lawsuit. (*Hunt v. Washington Apple*, 432
24 U.S. at 343; *see also Brotherhood of Teamsters & Auto Truck Drivers v. Unemployment Ins*
25 *Appeals Bd.* (1987) 190 Cal.App.3d 1515, 1521-1522 [applying the *Washington Apple* test].) The
26 State Council fails the first two prongs of the associational test, either of which alone is enough to
27 deny standing.

28 First, the interests the State Council seeks to protect are not germane to its purpose. The

1 State Council is made up of labor unions, labor councils, and building trades councils, and is
2 allegedly an advocate for the improvement of “all *working* men, women and *minors* in the
3 construction industry in California.” (Compl., ¶ 10 (emphasis added).) Thus, the State Council’s
4 alleged purpose is to protect workers and workers’ rights, *not voting rights and/or the voting*
5 *rights of minorities*. (Compl., ¶ 11.) The State Council’s purpose is both over-inclusive and
6 under-inclusive for the purposes of the CVRA. It is over-inclusive because the State Council
7 advocates (i) for minors, who by definition cannot vote, (ii) for working voters who are non-
8 Latino, and (iii) for non-voter workers. (Compl., ¶ 10.) It is under-inclusive because the State
9 Council does not advocate for Latino voters who do not work in the construction field. Although
10 the State Council attempts to plead its purpose in such a way as to allow it to satisfy the
11 associational standing requirements, it is clear from the face of the complaint that the *State*
12 *Council’s first and foremost priority is labor issues, not voting or racial issues*. The CVRA, on
13 the other hand, has nothing to do with labor issues. (See Elec. Code §§ 14025-14032.) Finally,
14 the State Council has, at best, an extremely loose connection with the City, as only two of its 169
15 affiliates allegedly have an unspecified number of members who are Latino voters in the City.
16 (Compl., ¶ 10).

17 Organizations that qualify for associational standing typically have a direct connection
18 between the rights they seek to protect and their purpose, unlike the State Council here. (See, e.g.,
19 *Bd. of Teamsters & Auto Truck Drivers v. Unemployment Ins. Appeals Bd.* (1987) 190 Cal.App.3d
20 1515, 1522 [dispute over denial of *unemployment benefits* germane to purpose of *labor union*];
21 *Monterey/Santa Cruz etc. v. Cypress Marina Heights LP* (2011) 191 Cal.App.4th 1500, 1521
22 [action regarding *prevailing wages* germane to purpose of *labor union*]; *Apartment Assn. of Los*
23 *Angeles County, Inc. v. City of Los Angeles* (2006) 136 Cal.App.4th 119, 129 [action regarding
24 fair rent issues germane to purpose of the apartment association]; *Driving Sch. Assn. of Cal. v. San*
25 *Mateo Union High Sch. Dist.* (1992) 11 Cal.App.4th 1513, 1517 [action regarding driving school
26 fees germane to purpose of Driving School Association of California]; *California Dental Assn. v.*
27 *California Dental Hygienists’ Assn.* (1990) 222 Cal.App.3d 49, 62 [dispute between dentist and
28 dental hygienists germane to purpose of California Dental Association, which represents 70% of

1 dentists in California].) It is clear from the mere titles of the organizations involved in the above
2 cases that their purposes were germane to the issues at hand.

3 The same cannot be said for the “State Building and Construction State Council of
4 California” and Latino voting rights in the City of Escondido. The State Council has been
5 previously involved in legal actions, but typically that litigation concerned labor issues, not voting
6 rights issues. (*See, e.g., State Building & Construction Trades Council of California v. Duncan*
7 (2008) 162 Cal.App.4th 289 [case concerning prevailing wage issues].) Thus, the State Council
8 fails the first prong the associational standing test.

9 Second, the “members” of the State Council lack standing in their own right, and thus the
10 State Council fails the second prong of the associational standing test. (*Washington Apple*, 432
11 U.S. at 343.) The “members” of the State Council consist of its organizational affiliates, not the
12 individual members of these affiliates. (Compl., ¶ 10.) Only individual members of these
13 affiliates, specifically an undefined number of members of the “Laborers’ Union Local 89” and
14 the “United Association of Plumbers, Steamfitters, HVAC Techs, and Apprentices Local 230”
15 arguably have standing under the CVRA. (Compl., ¶ 10.) Just as the State Council does not have
16 standing in its own right, its organizational affiliates do not have standing. These affiliated
17 organizations are not voters, they are not members of a protected class, and they are not residents
18 of the City. (*See Elec. Code* § 14032.)

19 Additionally, the State Council’s affiliates do not pass the organizational standing test.
20 The purposes of the “Laborers’ Union” and the “United Association of Plumbers, Steamfitters,
21 HVAC Techs, and Apprentices” appear to also relate to labor and employment issues. Thus, the
22 purposes of these affiliates are not germane to the voting rights of Latinos in the City. No facts
23 are pled in the entire complaint explaining what the purposes of these affiliates are or how these
24 affiliates are in any way involved with voting or election issues.

25 3. The State Council Cannot Bring a Representative Suit

26 Nor can the State Council bring a representative action. Under Code of Civil Procedure
27 section 382, “when the question is one of a common or general interest, of many persons, or when
28 the parties are numerous, and it is impracticable to bring them all before the court, one or more

1 may sue or defend for the benefit of all.” The State Council does not need to be involved to sue
2 “for the benefit of all” because only one plaintiff is needed to obtain the remedy being sought - a
3 change from at-large to district voting. The individual Plaintiffs have a better claim for standing
4 under the CVRA, and are better representatives than the State Council.

5 Moreover, a purported class representative must be a member of the class he seeks to
6 represent. Thus, organizations have often been barred from bringing suit on behalf of their
7 members. (*See, e.g., Salton City Etc. Owners Assn. v. M. Penn Phillips Co.* (1977) 75 Cal.App.3d
8 184, 190; *Greater Westchester Homeowners Assn., Inc. v. City of Los Angeles* (1970) 13
9 Cal.App.3d 523, 526 [demurrer properly sustained against homeowners association because it was
10 not a member of the interested class (homeowners who allegedly sustained property damage and
11 personal injury)]; *Los Angeles Fire & Police Protective League v. Rodgers*, 7 Cal.App.3d 419,
12 423-424 [general demurer properly sustained against Police Officer Protective League because it
13 was not a member of the interested class (employees of the Los Angeles Police Department)].)

14 The California Supreme Court has expressly held that ***a council made up of a group of***
15 ***unions was not the proper party to bring a suit on behalf city employees***, because the council and
16 its affiliated unions were not members of the class sought to be represented (city employees), and
17 only a small number of the members of affiliated unions were city employees. (*Parker v. Bowron*
18 (1953) 40 Cal. 2d 344, 356.) *Parker* is directly on point. There, the Council of Federated
19 Municipal Crafts of Los Angeles, which was made up of three affiliated unions, unsuccessfully
20 sought to represent city employees in a suit relating to the employees’ collective bargaining
21 agreement. (*Id.* at 347-348.) Even though nearly 400 members of the affiliated unions (out of
22 about 48,631 total members) were employees of the city, that was not a high enough percentage
23 for the court to allow representational standing. (*Id.* at 347-348, 356.)

24 Here, the State Council’s claim for standing is even more tenuous. The State Council in
25 *Parker* operated only in the defendant city and had hundreds of employees in the relevant class;
26 still, it was found not to be a proper representative plaintiff under Code of Civil Procedure section
27 382. Here, the State Council operates all over the state and has over 300,000 members belonging
28 to 169 affiliated organizations, yet only two of these affiliates have members in the City and only

1 some of those members are Latino voters. (Compl., ¶¶ 10, 11.) *A fortiori*, it cannot be the proper
2 representative for Latino voters in the City.

3 Furthermore, “organizational standing will be withheld if the organization lacks a
4 community of interest with its members and thus cannot faithfully represent their interests.”
5 (*Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1134.) Here, the State Council lacks
6 such a community of interest with all of its members. Many of the members of the State Council’s
7 affiliates are not Latino, are not voters, and/or are not residents of the City. (Compl., ¶¶10-11.)
8 The State Council cannot faithfully represent the interests of both its worker-members and the
9 voting Latinos in Escondido that do not work in construction or the building trades, as the interests
10 of the State Council and the City’s Latino voters may not always be the same. (*See Rebney*, 220
11 Cal.App.3d. at 1134.)

12 4. **The State Council Lacks Taxpayer or Citizen Standing Under the**
13 **CVRA**

14 The State Council also lacks standing under any taxpayer-standing theory. Taxpayers have
15 standing to bring an action against a city or its officers to restrain or prevent the illegal expenditure
16 of funds by the city. (Code Civ. Proc § 526a.) However, standing is only given to individual
17 taxpayers or corporations who pay taxes. (*Id.*) The State Council is a “non-profit labor
18 federation.” (Compl., ¶ 10.) Not only is the State Council not a “corporation,” but as a non-profit
19 entity it presumably does not pay taxes. The Complaint does not allege the State Council has paid
20 taxes at any time to the City, that it is a resident of the City, or that it owns any property in the
21 City. (*See generally*, Compl.) Thus, the State Council cannot benefit from taxpayer standing.
22 (*See Cornelius v. L.A. County Etc. Auth.* (1996) 49 Cal.App.4th 1761, 1778 [nonresident who does
23 not own property or pay taxes in defendant city does not have taxpayer standing].)

24 Furthermore, a taxpayer action is brought for preventative relief, while a citizen action
25 seeks affirmative relief. (*Connerly v. State Personnel Board* (2001) 92 Cal.App.4th 16, 29.) The
26 State Council brings a claim for affirmative relief, seeking a change to the City’s voting system.
27 (Compl., Prayer for Relief.) Thus, standing would be available only under a citizen action theory
28 rather than a taxpayer action. (*Connerly*, 92 Cal.App.4th at 29.) The State Council, however, as a

1 nonprofit federation, is not a natural person and clearly not a citizen. (Compl., ¶ 10.)

2 **B. Plaintiffs' Second Cause Of Action Fails Because The State Council Lacks**
3 **Standing Under The Federal Voting Rights Act**

4 Similarly, the State Council lacks standing under the federal Voting Rights Act ("FVRA")
5 under any theory. Therefore, Defendants' demurrer to the State Council's Second Cause of Action
6 must be sustained without leave to amend.

7 1. **The State Council Lacks Standing in its Own Right under the FVRA**

8 Only an "aggrieved person" has standing to sue for violations of the FVRA. (42 U.S.C.
9 1973a). An "aggrieved person" is defined as "any person injured by an act of discrimination." (S.
10 Rep. 94-295 at 40, 1975 U.S.C.C.A.N. 774, 806.) An "aggrieved person" has been held to mean
11 an "aggrieved voter." (*See Roberts v. Wamser* (8th Cir. 1989) 883 F.2d 617, 621.) In order to
12 have standing, the aggrieved person's right to vote must have been infringed upon because of the
13 voter's race. (*Id.* [failed candidate does not have standing to sue under the FVRA because that
14 person's right to vote was not infringed upon due to race]; *see also Shirt v. Hazeltine* (D.S.D.
15 2005) 444 F. Supp. 2d 992, 997 [standing to seek relief under the FVRA is limited to voters and
16 the Attorney General].) The State Council's right to vote was not infringed upon because it has no
17 right to vote for the City Council. Thus, it lacks standing under the FVRA.

18 2. **The State Council Lacks Article III Standing**

19 Even if it qualified as an "aggrieved person," the State Council would still lack standing to
20 sue under the FVRA because it cannot satisfy the minimum case or controversy standing
21 requirements mandated by Article III of the U.S. Constitution. An organization has standing to
22 sue on its own behalf only when it meets the same standing test that applies to individuals. (*See*
23 *Havens Realty Corp. v. Coleman* (1982) 455 U.S. 363, 378-79.) Under Article III, a plaintiff must
24 show it has (i) suffered injury in fact, (ii) the injury is fairly traceable to the actions of the
25 defendant, and (iii) the injury will likely be redressed by a favorable decision. (*Lujan v. Defenders*
26 *of Wildlife* (1992) 504 U.S. 555, 560-61.) Here, the State Council lacks standing because it has
27 not suffered an injury in fact.

28 An injury in fact means a "concrete and particularized, actual or imminent invasion of a

1 legally protected interest.” (*Lujan*, 504 U.S. at 560 (internal citations omitted).) “The injury in
2 fact test requires more than an injury to a cognizable interest. It requires that *the party seeking*
3 *review be himself among the injured.*” (*Id.* at 563 (emphasis added).) Thus, the relevant question
4 is whether the State Council has been injured by the at-large voting system in the City of
5 Escondido. (*See Mulhall v. Unite Here Local 355* (11th Cir. 2010) 618 F.3d 1279, 1286.) The
6 plaintiff needs to have “alleged . . . a personal stake in the outcome of the controversy.” (*Havens*
7 *Reality Corp.*, 455 U.S. 363, 379.)

8 Here, the legal interest/personal stake of the State Council is clearly lacking. In contrast,
9 the relevant organization in *Havens Reality* had standing because it “had to devote significant
10 resources to identify and counteract the defendant’s racially discriminatory . . . practices.”
11 (*Havens Reality*, 455 U.S. at 379.) The State Council is a state-wide labor organization that has
12 pled no facts indicating it has been harmed in any way by the at-large voting system in the City. It
13 has merely pled “an interest” in protecting the voting rights of Latinos, alleging that certain City
14 officials elected under the at-large system “have pursued economic policies contrary to the
15 interests of working people of Escondido.” That is not only extremely vague, but “working
16 people” is not the relevant “protected class” at issue under either the FVRA or the CVRA.
17 (Compl., ¶ 11.) “[A] mere interest in a problem, no matter how longstanding the interest and no
18 matter how qualified the organization is in evaluating the problem, is not sufficient by itself to
19 render the organization ‘adversely affected’ or ‘aggrieved.’” (*Sierra Club v. Morton* (1972) 405
20 U.S. 727, 739 [superseded by statute on different grounds].) In *Newman v. Voinovich* (S.D. Oh
21 1992) 789 F.Supp 1410, the court sustained a motion to dismiss for failure to state a claim because
22 plaintiff, a white male, did not have standing to represent nonwhite voters under the FVRA. (*Id.* at
23 1416.) The plaintiff in *Newman* claimed that “he has always been active and interested in seeing
24 minorities elected or appointed to judicial positions.” (*Id.*) The court held “[w]hile this is a
25 meritorious goal, this does not create standing.” (*Id.*) Similarly, the State Council’s “interest” in
26 seeing minorities elected is not sufficient to cause injury and confer standing.

27 Similarly, a California district court has held the Mexican American Political Association
28 (“MAPA”), a group that clearly has a stronger connection to Latino voters than the State Council

1 does, did not have standing under section 5 of the FVRA. (*Lopez v. Merced County* (E.D. Cal
2 2008) 2008 U.S. Dist. LEXIS 3941.) There, MAPA pled that its purpose was thwarted by the
3 failure of various jurisdictions to obtain preclearance for changes in their voting practices, and that
4 “MAPA has been forced to divert its limited resources to assist Latino residents in these
5 jurisdictions, and to advocate that the jurisdictions comply with preclearance procedures.” (*Id.* at
6 *23.) Those allegations were not enough to confer standing because there was no evidence of an
7 organizational harm to MAPA, or that MAPA actually diverted significant organizational
8 resources in an effort to assure Hispanic voter rights. (*Id.*) Similarly, here the State Council’s
9 allegations that it devotes its “time, energy and resources” to “enhance affiliated members’ voting
10 rights” is no more specific than the allegations in *Lopez*; nor does the State Council allege
11 concrete organizational harm. (Compl. at ¶ 11.)

12 Additionally, there are judicially-imposed “prudential limits” on standing: (i) a plaintiff
13 must assert his own legal rights and interests, not those of a third party; (ii) the injury must consist
14 of more than a generalized grievance that is shared by many; and (iii) the plaintiff’s complaint
15 must fall within the zone of interests to be regulated or protected by the rule of law in question.
16 (*Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*
17 (1982) 454 U.S. 464, 471-77.) The prudential limits on standing apply to the FVRA. (*See Shirt v.*
18 *Hazeltine* (D.S.D. 2005) 444 F.Supp.2d 992, 997 [applying prudential standing requirements to
19 the FVRA]; *Kuhn v. Thompson* (M.D. Ala. 2004) 304 F.Supp.2d 1313, 1333 [same]; *Friends of*
20 *Eudora Pub. Sch. Dist. v. Beebe* (E.D. Ark. 2008) 2008 U.S. Dist. LEXIS 24112, *21-23 [same].)
21 The State Council lacks standing under prudential limits, as well.

22 3. **The State Council Lacks Associational Standing to Sue on Behalf of its**
23 **Members Under the FVRA**

24 Furthermore, the State Council does not have associational standing under the FVRA for
25 the reasons discussed above. The relevant test under federal and California law is met if (i) the
26 interests the organization seeks to protect are germane to the organization's purpose; (ii) the
27 organization’s members would otherwise have standing to sue in their own right; and (3) neither
28 the claim asserted nor the relief requested requires the participation of individual members in the

1 lawsuit. (*Hunt v. Washington Apple Advertising Comm'n* (1977) 432 U.S. 333, 343.)

2 a. **The Interests State Council Seeks to Protect Under the FVRA**
3 **are Not Germane to its Purpose**

4 The purpose of the FVRA is to protect minority voters. (*See Conway School District v.*
5 *Wilhoit* (1994) 854 F. Supp. 1430, 1433.) As discussed above, the purpose of the State Council is
6 not germane to the voting practices and/or voting rights of Latinos residing in the City. Typically,
7 when an organization's purpose is germane to the interests it seeks to protect, there is a direct
8 connection. (*See, e.g., Cleveland County Assn. for Govt. by the People v. Cleveland County Bd. of*
9 *Comm.* (D.C. Cir. 1998) 142 F.3d 468, 473 [association had standing to sue to ensure lawful
10 method of electing county board]; *Perez-Santiago v. Volusia County* (M.D. Fla. 2009) 2009 U.S.
11 Dist. LEXIS 75350, *13 [Hispanic cultural awareness group did not have standing to sue to
12 protect the voting rights of Puerto Rican immigrants].) Here, the State Council's purpose of
13 advocating for a better labor environment is not germane to voting rights, just as "Hispanic
14 cultural awareness" was not germane to voting rights in *Perez-Santiago*. (*Perez-Santiago*, 2009
15 U.S. Dist. LEXIS 75350 at *13.) The State Council's purpose of advocating for a better labor
16 environment is simply not germane to voting rights.

17 b. **The Members of the Affiliates of the State Council Lack**
18 **Standing in Their Own Right**

19 The affiliates of the State Council also lack standing in their own right under the FVRA for
20 the same reasons discussed above. The State Council does not identify the specific members of
21 their affiliated organizations that allegedly have standing to sue under the FVRA. An organization
22 fails to establish standing to sue on behalf of its members absent these specific facts. (*See Legal*
23 *Aid Soc. v. Legal Servs. Corp.* (9th Cir. 1998) 145 F.3d 1017, 1031 [organization alleging that
24 unnamed members have standing was insufficient to establish associational standing].) Clearly
25 State Council's pleading that some "members of the State Council's affiliates . . . are Latinos who
26 reside and vote in Escondido" is not sufficient. (Compl., ¶ 10.) The State Council fails the
27 associational standing test, and this demurrer must be sustained without leave to amend.

28 ///

1 **III. CONCLUSION**

2 For all of the reasons set forth above, Defendants' demurrer should be sustained without
3 leave to amend as to both of the State Council's alleged causes of action.

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5 Dated:

RUTAN & TUCKER, LLP

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7 By: 

8 John A. Ramirez
9 Attorneys for Defendants

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PROOF OF SERVICE BY MAIL

Demetrio Gomez, et al. v. City of Escondido, et al.
San Diego County Superior Court Case No. 37-2011-00060480-CU-CR-NC

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed by the law office of Rutan & Tucker, LLP in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 611 Anton Boulevard, Suite 1400, Costa Mesa, California 92626-1931.

On January 26, 2012, I served on the interested parties in said action the within:

**NOTICE OF DEMURRER AND DEMURRER TO COMPLAINT;
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**

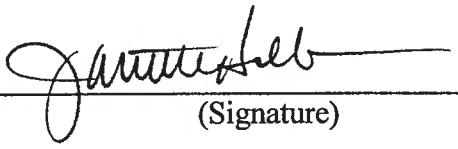
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Executed on January 26, 2012, at Costa Mesa, California.

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

Janette Hollmer
(Type or print name)


(Signature)

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SERVICE LIST

Demetrio Gomez, et al. v. City of Escondido, et al.
San Diego County Superior Court Case No. 37-2011-00060480-CU-CR-NC

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