

Ballot Petitions Do Not Have to Be Multilingual

Padilla v. Lever (Alicemarie H. Stotler, 8:02-cv-1145),
Imperial v. Castruita (R. Gary Klausner, 2:05-cv-8940),
and *Chinchay v. Verjil* (Audrey B. Collins, 2:06-cv-1637)
(C.D. Cal.) and *Madrigal v. County of Monterey*
(5:06-cv-1407), *Melendez v. Board of Supervisors*
(5:06-cv-1730), *Rangel v. County of Monterey*
(6:06-cv-2202), and *Rancho San Juan Opposition*
Coalition v. Board of Supervisors (6:06-cv-2369)
(James Ware) and *Heredia v. Santa Clara County*
(Ronald M. Whyte, 6:06-cv-4718) (N.D. Cal.)

After nearly four years of litigation, the U.S. Court of Appeals for the Ninth Circuit determined that recall petitions do not have to be offered in multiple languages.

A December 12, 2002, federal complaint filed in the Central District of California's Santa Ana courthouse challenged a petition to recall a member of Santa Ana's school board who supported bilingual education.¹ On the day after the plaintiffs filed a December 23 amended complaint, Judge Alicemarie H. Stotler denied the plaintiffs a temporary restraining order, but she ordered the defendants to show cause at a January 6, 2003, hearing why the February 4 recall election should not be enjoined.² At the hearing, Judge Stotler denied the plaintiffs immediate relief.³ On January 10, Judge Stotler largely adopted the defendants' proposed findings of fact and conclusions of law.⁴ The recall election was successful.⁵

On November 23, 2005, in a two-to-one decision, the court of appeals determined that the Voting Rights Act required multilingual recall petitions.⁶

A December 27, 2005, federal complaint filed in the Central District's Los Angeles courthouse by the mayor of Rosemead and a Chinese-speaking voter

1. *Padilla v. Lever*, 463 F.3d 1046, 1049 (9th Cir. 2006); Docket Sheet, *Padilla v. Lever*, No. 8:02-cv-1145 (C.D. Cal. Dec. 12, 2002) [hereinafter C.D. Cal. *Padilla* Docket Sheet]; see Daniel Yi, *Group Sues to Block Lopez Recall Election*, L.A. Times, Orange Cnty., Dec. 13, 2002, Cal. Metro, at 3.

2. Order, *Padilla*, No. 8:02-cv-1145 (C.D. Cal. Dec. 24, 2002), D.E. 8; C.D. Cal. *Padilla* Docket Sheet, *supra* note 1; *Padilla*, 463 F.3d at 1049.

3. C.D. Cal. *Padilla* Docket Sheet, *supra* note 1; see Daniel Yi, *Santa Ana Recall Vote to Proceed, Judge Says*, L.A. Times, Orange Cnty., Jan. 7, 2003, Cal. Metro, at 3.

4. Opinion, *Padilla*, No. 8:02-cv-1145 (C.D. Cal. Jan. 13, 2003), D.E. 23.

5. See Daniel Yi & Claire Luna, *Lopez Walloped in Schools Recall Vote*, L.A. Times, Feb. 5, 2003, Cal. Metro, at 1; Ray F. Herndon & Jennifer Mena, *Ousted Santa Ana Trustee Lost Even His Latino Base*, L.A. Times, Orange Cnty., Feb. 6, 2003, Cal. Metro, at 1.

6. *Padilla v. Lever*, 429 F.3d 910 (9th Cir. 2005), *vacated*, 446 F.3d 963 (9th Cir. 2006); see H.G. Rexa, *Santa Ana Recall Petitions Faulted*, L.A. Times, Nov. 24, 2005, Cal. Metro, at 1.

challenged a planned February 7, 2006, election on whether to recall the mayor and a member of the city council, because the ballot petitions were not multilingual.⁷ The recall election was intended to remove from office supporters of Wal-Mart.⁸ With their complaint, the plaintiffs filed an application for a temporary restraining order.⁹

Rosemead was under a September 6, 2005, consent decree mandating legally required accommodations for voters speaking Chinese, Vietnamese, and Spanish.¹⁰ Paramount and Azusa were under similar consent decrees as a result of similar actions also brought by the Justice Department in 2005 concerning Spanish.¹¹

The court issued, on January 4, 2006, a temporary restraining order and an order to show cause on January 17 why a preliminary injunction against the Rosemead recall should not be granted.¹² On January 6, in response to an application for clarification, the court said that preparations for the election could continue while the legality of the election was under review.¹³ On January 12, Judge R. Gary Klausner informed the parties that he would decide the matter on papers alone.¹⁴

On January 17, Judge Klausner issued a preliminary injunction.¹⁵ He relied on, and retroactively applied, the court of appeals' decision in the Santa Ana case.¹⁶

Two Loma Linda voters and a property owner filed a federal complaint on March 17 challenging two referenda and an initiative because the ballot petitions were circulated only in English.¹⁷ On March 21, Judge Mariana R. Pfaelzer recused herself, and the case was reassigned to Judge Audrey B. Collins.¹⁸ On

7. Docket Sheet, *Imperial v. Castruita*, No. 2:05-cv-8940 (C.D. Cal. Dec. 27, 2005) [hereinafter C.D. Cal. *Imperial* Docket Sheet]; *Imperial v. Castruita*, 418 F. Supp. 2d 1174, 1176–77 (C.D. Cal. 2006); see Jason Kosareff, *Judge Deals Blow to Recall*, San Gabriel Valley Trib., Jan. 5, 2006.

8. See Christina L. Esparza, *Wal-Mart Helped by Recall Defeat*, San Gabriel Valley Trib., Sept. 21, 2006; Jason Kosareff, *Wal-Mart Foes to Resume Rosemead Recall Effort*, San Gabriel Valley Trib., Jan. 23, 2006.

9. C.D. Cal. *Imperial* Docket Sheet, *supra* note 7; *Imperial*, 418 F. Supp. 2d at 1176–77.

10. Consent Decree, *United States v. City of Rosemead*, No. 2:05-cv-5131 (C.D. Cal. Sept. 8, 2005), D.E. 8; see *Imperial*, 418 F. Supp. 2d at 1177.

11. Consent Decree, *United States v. City of Azusa*, No. 2:05-cv-5147 (C.D. Cal. Aug. 25, 2005), D.E. 8; Consent Decree, *United States v. City of Paramount*, No. 2:05-cv-5132 (C.D. Cal. Aug. 19, 2005), D.E. 9.

12. C.D. Cal. *Imperial* Docket Sheet, *supra* note 7; *Imperial*, 418 F. Supp. 2d at 1176–77.

13. C.D. Cal. *Imperial* Docket Sheet, *supra* note 7; *Imperial*, 418 F. Supp. 2d at 1176–77 n.1.

14. Minutes, *Imperial v. Castruita*, No. 2:05-cv-8940 (C.D. Cal. Jan. 12, 2006), D.E. 22.

15. *Imperial*, 418 F. Supp. 2d 1174; see Kosareff, *supra* note 8.

16. *Imperial*, 418 F. Supp. 2d at 1179–80; see *Padilla v. Lever*, 429 F.3d 910 (9th Cir. 2005), *vacated*, 446 F.3d 963 (9th Cir. 2006).

17. Docket Sheet, *Chinchay v. Verjil*, No. 2:06-cv-1637 (C.D. Cal. Mar. 17, 2006); Preliminary Injunction Opinion at 1–3, *id.* (Apr. 10, 2006), D.E. 30 [hereinafter *Chinchay* Preliminary Injunction Opinion].

18. Reassignment Order, *id.* (Mar. 21, 2006), D.E. 10.

March 24, Judge Collins issued a temporary restraining order and an order to show cause at an April 7 hearing why the election should not be enjoined.¹⁹

On April 10, Judge Collins issued a preliminary injunction with respect to the initiative, retroactively applying the Santa Ana case.²⁰ Noting that the referendum petition process includes less state involvement, Judge Collins did not enjoin the referenda.²¹

(On April 12, 2006, plaintiffs voluntarily dismissed an April 4 action filed in the Eastern District respecting a Kern County initiative on biosolids.²²)

On September 19, over the dissent of one judge, a 15-judge en banc panel of the court of appeals reached a conclusion different from the three-judge panel's and affirmed Judge Stotler: recall petitions are not provided by the government, and a multilingual requirement would only chill their distribution.²³

On May 8, 2006, Judge Klausner denied an application to intervene in support of the Rosemead recall.²⁴ Following a rescheduled recall election held on September 19, which was unsuccessful, Judge Klausner accepted, on October 24, a stipulation of dismissal.²⁵

On June 19, Judge Collins granted intervenors' motion for reconsideration pending the court of appeals' rehearing of the Santa Ana case.²⁶ On October 4, Judge Collins granted a stipulated dismissal of the Loma Linda case.²⁷

Three Monterey County voters filed a federal complaint in the Northern District of California's San Jose courthouse on February 24, 2006, seeking to keep a Monterey County initiative opposing a golf-and-residential development off of the June 6 ballot, because the ballot petition had not been circulated in Spanish as

19. Order, *id.* (Mar. 24, 2006), D.E. 11; Minutes, *id.* (Mar. 24, 2006), D.E. 22; *Chinchay* Preliminary Injunction Opinion, *supra* note 17, at 3.

20. *Chinchay* Preliminary Injunction Opinion, *supra* note 17; Preliminary Injunction, *Chinchay*, No. 2:06-cv-1637 (C.D. Cal. May 2, 2006), D.E. 37; Findings of Fact and Conclusions of Law, *id.* (Apr. 28, 2006), D.E. 36.

21. *Chinchay* Preliminary Injunction Opinion, *supra* note 17, at 13–16, 18.

22. *Dismissal Order*, *Bonilla v. Barnett*, No. 1:06-cv-375 (E.D. Cal. Apr. 13, 2006), D.E. 18; *see Amended Complaint*, *id.* (Apr. 11, 2006), D.E. 15; *Docket Sheet*, *id.* (Apr. 4, 2006) (noting a hearing on April 7, 2006); *Complaint*, *id.* (Apr. 4, 2006), D.E. 1.

23. *Padilla v. Lever*, 463 F.3d 1046 (9th Cir. 2006) (en banc); *see* Larry Parsons, *Court Says Spanish Not Necessary for Petitions*, *Monterey Herald*, Sept. 20, 2006; H.G. Reza, *Ruling on O.C. Petitions Reversed*, *L.A. Times*, Sept. 20, 2006, *Cal. Metro*, at 1.

En banc panels in the Ninth Circuit usually include 11 judges, but at the time of this case the court was experimenting with en banc panels of 15 judges. *See* Pamela Ann Rymer, *The "Limited" En Banc: Half Full, or Half Empty?*, 48 *Ariz. L. Rev.* 317, 319 n.18 (2006).

24. Order, *Imperial v. Castruita*, No. 2:05-cv-8940 (C.D. Cal. May 8, 2006), D.E. 51.

25. Stipulation, *id.* (Oct. 24, 2006), D.E. 66; *see* Christina L. Esparza, *Council Recall Election Vote Today to Be Monitored by Department of Justice*, *San Gabriel Valley Trib.*, Sept. 19, 2006; Esparza, *supra* note 8.

26. Opinion, *Chinchay v. Verjil*, No. 2:06-cv-1637 (C.D. Cal. June 19, 2006), D.E. 57; *see Padilla v. Lever*, 446 F.3d 922 (9th Cir. 2006) (granting rehearing en banc); *see also* Stephen Wall, *Ruling Delights Loma Linda Slow-Growth Group*, *San Bernardino Cnty. Sun*, June 21, 2006; Juliet Chung, *Court Will Rehear O.C. Petition Case*, *L.A. Times*, Apr. 21, 2006, *Cal. Metro*, at 3.

27. Stipulated Dismissal, *Chinchay*, No. 2:06-cv-1637 (C.D. Cal. Oct. 4, 2006), D.E. 61.

well as English.²⁸ Four days later, the county's board of supervisors voted to keep the initiative off of the ballot.²⁹ On the day after that, supporters of the initiative filed a mandamus action in state court to overturn the board's decision.³⁰ The county removed the action to federal court on March 7.³¹ Magistrate Judge Richard Seeborg determined that the two cases were related,³² and the court assigned them to Judge James Ware.³³ On March 23, in light of the court of appeals' first ruling in the Santa Ana case, Judge Ware issued a permanent injunction against the development initiative.³⁴ The initiative supporters filed a notice of appeal on March 27.³⁵

Also on March 27, two of the three voters opposing the initiative filed a new federal action seeking to enjoin a related referendum planned for the June 6 ballot, again because the ballot petitions were not circulated in Spanish.³⁶ On April 6, the county removed an April 3 action filed in state court seeking mandamus reversal of the board of supervisor's March 28 decision to take the referendum off of the ballot.³⁷ These cases were both assigned to Judge Ware as related to the first two Monterey cases.³⁸

In light of its ultimate holding in the Santa Ana case, the court of appeals vacated Judge Ware's March 23 decision.³⁹ On March 29, 2007, Judge Ware ruled that the Monterey initiative and the Monterey referendum should be placed on the June 5, 2007, ballot.⁴⁰ The development proposal was defeated by the voters.⁴¹ On

28. *Complaint*, *Madrigal v. Cnty. of Monterey*, No. 5:06-cv-1407 (N.D. Cal. Feb. 24, 2006), D.E. 1; *In re Cnty. of Monterey Initiative Matter*, 427 F. Supp. 2d 958, 959 (N.D. Cal. 2006); see Larry Parsons, *Defeat for General Plan Initiative*, *Monterey Herald*, Apr. 6, 2006.

29. *In re Initiative Matter*, 427 F. Supp. 2d at 959.

30. *Id.*

31. *Docket Sheet*, *Melendez v. Board of Supervisors*, No. 5:06-cv-1730 (N.D. Cal. Mar. 7, 2006); *In re Initiative Matter*, 427 F. Supp. 2d at 959–60.

32. *Order*, *Melendez*, No. 5:06-cv-1730 (N.D. Cal. Mar. 13, 2006), D.E. 5.

Judge Seeborg was elevated to become a district judge on January 4, 2010. Federal Judicial Center Biographical Directory of Federal Judges, <http://www.fjc.gov/history/home.nsf/page/judges.html>.

33. *Order*, *Melendez*, No. 5:06-cv-1730 (N.D. Cal. Mar. 14, 2006), D.E. 9; *Order*, *Madrigal*, No. 5:06-cv-1407 (N.D. Cal. Mar. 14, 2006), D.E. 5; *In re Initiative Matter*, 427 F. Supp. 2d at 960.

Judge Ware retired on August 31, 2012. Federal Judicial Center Biographical Directory of Federal Judges, <http://www.fjc.gov/history/home.nsf/page/judges.html>.

34. *In re Initiative Matter*, 427 F. Supp. 2d 958; see Larry Parsons, *Measure C Ballot Bump Possible*, *Monterey Herald*, Mar. 25, 2006.

35. *Notice of Appeal*, *Madrigal*, No. 5:06-cv-1407 (N.D. Cal. Mar. 27, 2006), D.E. 31.

36. *Complaint*, *Rangel v. Cnty. of Monterey*, No. 6:06-cv-2202 (N.D. Cal. Mar. 27, 2006), D.E. 1.

37. *Notice of Removal*, *Rancho San Juan Opposition Coal. v. Board of Supervisors*, No. 6:06-cv-2369 (N.D. Cal. Apr. 6, 2006), D.E. 1.

38. *Order*, *id.* (May 9, 2006), D.E. 9; *Order*, *Rangel*, No. 6:06-cv-2202 (N.D. Cal. May 9, 2006), D.E. 4.

39. *Order*, *In re Cnty. of Monterey Initiative Matter*, No. 06-15531 (9th Cir. Nov. 20, 2006), filed as *Order*, *Madrigal*, No. 5:06-cv-1407 (N.D. Cal. Nov. 22, 2006), D.E. 35.

40. *Summary Judgment Opinion*, *Madrigal*, No. 5:06-cv-1407 (N.D. Cal. Mar. 29, 2007), D.E. 66.

November 9, 2007, Judge Ware determined that supporters of the initiative and supporters of the referendum were entitled to attorney fees.⁴² In 2008, the parties settled the amount of the fee recovery.⁴³

On September 1, 2006, Judge Ronald M. Whyte, another judge in the Northern District's San Jose courthouse, denied preliminary injunctive relief to opponents of a ballot initiative while the court of appeals' en banc decision was pending.⁴⁴ Four voters filed a federal action on August 3 to enjoin a Santa Clara County ballot measure promoting conservation and opposing development in parts of the county unless petitions were offered in English, Chinese, Spanish, Tagalog, and Vietnamese.⁴⁵ On August 18, Judge Whyte approved stipulated intervention of the initiative's proponents.⁴⁶ After the court of appeals' en banc decision, Judge Whyte granted a stipulated dismissal on October 13.⁴⁷ In November, the initiative failed.⁴⁸

41. See Jim Johnson, *Developer Plans Legal Challenge*, Monterey Herald, June 6, 2007, at A1.

42. [Order](#), *Melendez v. Board of Supervisors*, No. 5:06-cv-1730 (N.D. Cal. Nov. 9, 2007), D.E. 87.

43. [Order](#), *Madrigal*, No. 5:06-cv-1407 (N.D. Cal. Mar. 18, 2008), D.E. 85; [Order](#), *Melendez*, No. 5:06-cv-1730 (N.D. Cal. Jan. 11, 2008), D.E. 94.

44. [Opinion](#), *Heredia v. Santa Clara Cnty.*, No. 5:06-cv-4718 (N.D. Cal. Sept. 1, 2006), D.E. 32, available at [2006 WL 2547816](#); [Minutes](#), *id.* (Sept. 1, 2006), D.E. 33; see *Judge Rejects Challenge Based on Civil Rights*, San Jose Mercury News, Sept. 3, 2006, at A1.

45. [Complaint](#), *Heredia*, No. 5:06-cv-4718 (N.D. Cal. Aug. 3, 2006), D.E. 1; see [Preliminary Injunction Motion](#), *id.* (Aug. 4, 2006), D.E. 3; see also Mary Anne Ostrom, *Suit Filed Over Land Petition*, San Jose Mercury News, Aug. 12, 2006, at B1.

46. [Order](#), *Heredia*, No. 5:06-cv-4718 (N.D. Cal. Aug. 18, 2006), D.E. 27.

47. [Stipulated Dismissal](#), *id.* (Oct. 13, 2006), D.E. 37.

48. See Paul Rogers & Leigh Poitinger, *Complexity Likely Killed Green Measure*, Contra Costa Times, Dec. 31, 2006, at F4.