

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*
 (5:06-cv-2202), and *Rancho San Juan Opposition Coalition*
v. Board of Supervisors (5:06-cv-2369)
 (James Ware) and *Heredia v. Santa Clara County*
 (Ronald M. Whyte, 5:06-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. The litigation began with a December 12, 2002, complaint challenging a petition to recall a member of the school board for Santa Ana, California, in a February 4 election. Ultimately, the litigation included complaints filed in 2005 and 2006 as well.

Subject: Recall elections. *Topics:* Ballot language; ballot measure; recusal.

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. District courts ultimately applied the same rationale to initiative and referendum petitions.

Santa Ana: Recall

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

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 Cty., 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.

Judge Stotler died on June 9, 2014. Federal Judicial Center Biographical Directory of Article III Federal Judges [hereinafter FJC Biographical Directory], www.fjc.gov/history/judges.

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 Cty., Jan. 7, 2003, Cal. Metro, at 3.

the defendants' proposed findings of fact and conclusions of law.⁴ The recall election was successful.⁵

Multilingual Petitions Required

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

Rosemead: Recall

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 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, Judge Dale S. Fischer said that preparations for

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 Cty., 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.

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.

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

Loma Linda: Initiative and Referendum

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 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

Judge Collins issued a preliminary injunction on April 10 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 “[A] given referendum petition is neither submitted to, received by nor supplemented in any way by the state until *after* it has been circulated and all signatures have been collected”²²

(On April 12, 2006, plaintiffs voluntarily dismissed an April 4 action filed in the Eastern District respecting a Kern County initiative on biosolids.²³)

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.

Judge Collins retired on August 1, 2014, and Judge Pfaelzer died on May 14, 2015. FJC Biographical Directory, *supra* note 2.

19. Order, *Chinchay*, No. 2:06-cv-1637 (C.D. Cal. 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.

“The initiative is the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them.” *Id.* at 7. “The referendum is the power of the electors to approve or reject statutes or parts of statutes.” *Id.* at 8.

22. *Id.* at 14.

23. 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.

Multilingual Petitions Not Required

On September 19, over the dissent of one judge, a fifteen-judge en banc panel of the court of appeals reached a conclusion different from the three-judge panel's and affirmed Judge Stotler's ruling: recall petitions are not provided by the government, and a multilingual requirement would only chill their distribution.²⁴

On May 8, 2006, Judge Klausner denied an application to intervene in support of the Rosemead recall.²⁵ Following a rescheduled recall election held on September 19, which was unsuccessful, Judge Klausner accepted, on October 24, a stipulation of dismissal.²⁶

On June 19, Judge Collins granted intervenors' motion for reconsideration pending the court of appeals' rehearing the Santa Ana case.²⁷ On October 4, Judge Collins granted a stipulated dismissal of the Loma Linda case.²⁸

Monterey County: Initiative and Referendum

Before the en banc decision, 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 well as English.²⁹ Four days later, the county's board of supervisors voted to keep the initiative off of the ballot.³⁰ On the day after that, supporters of the initiative filed a mandamus action in state court to overturn the board's decision.³¹ The county removed the action to federal court on March 7.³² Magistrate Judge Richard Seeborg determined that the two

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

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

26. 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.

27. 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 Cty. Sun, June 21, 2006; Juliet Chung, *Court Will Rehear O.C. Petition Case*, L.A. Times, Apr. 21, 2006, Cal. Metro, at 3.

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

29. Complaint, Madrigal v. County of Monterey, No. 5:06-cv-1407 (N.D. Cal. Feb. 24, 2006), D.E. 1; *In re Cty. 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.

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

31. *Id.*

32. 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.

cases were related,³³ and the court assigned them to Judge James Ware.³⁴ 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.³⁵ The initiative supporters filed a notice of appeal on March 27.³⁶

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.³⁷ 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.³⁸ These cases were both assigned to Judge Ware as related to the first two Monterey cases.³⁹

In light of its ultimate holding in the Santa Ana case, the court of appeals vacated Judge Ware's March 23 decision.⁴⁰ On March 29, 2007, Judge Ware ruled that the Monterey initiative and the Monterey referendum should be placed on the June 5 ballot.⁴¹ The development proposal was defeated by the voters.⁴² On November 9, Judge Ware determined that supporters of the initiative and supporters of the referendum were entitled to attorney fees.⁴³ In 2008, the parties settled the amount of the fee recovery.⁴⁴

Santa Clara County: Initiative

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

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

Judge Seeborg became a district judge on January 4, 2010. FJC Biographical Directory, *supra* note 2.

34. 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. FJC Biographical Directory, *supra* note 2.

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

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

37. Complaint, *Rangel v. County of Monterey*, No. 5:06-cv-2202 (N.D. Cal. Mar. 27, 2006), D.E. 1.

38. Notice of Removal, *Rancho San Juan Opposition Coal. v. Bd. of Supervisors*, No. 5:06-cv-2369 (N.D. Cal. Apr. 6, 2006), D.E. 1.

39. Order, *id.* (May 9, 2006), D.E. 9; Order, *Rangel*, No. 5:06-cv-2202 (N.D. Cal. May 9, 2006), D.E. 4.

40. Order, *In re Cty. 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.

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

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

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

44. 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.

pending.⁴⁵ 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.⁴⁶ On August 18, Judge Whyte approved stipulated intervention of the initiative's proponents.⁴⁷ After the court of appeals' en banc decision, Judge Whyte granted a stipulated dismissal on October 13.⁴⁸ In November, the initiative failed.⁴⁹

45. Opinion, *Heredia v. Santa Clara County*, No. 5:06-cv-4718 (N.D. Cal. Sept. 1, 2006), D.E. 32, 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.

46. 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.

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

48. Stipulated Dismissal, *id.* (Oct. 13, 2006), D.E. 37.

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