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SABAS RANGEL and MARIA BUELL

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re: County of Monterey Initiative  
Matter

and

In re Monterey Referendum

Defendants.

CIVIL ACTION NOS.  
C 06-01407 JW  
C 06-02202 JW

**PLAINTIFFS RANGEL, *ET AL.*,  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN OPPOSITION OF  
*MELENDEZ* PLAINTIFFS' AND  
*RANCHO SAN JUAN OPPOSITION  
COALITION* PLAINTIFFS' MOTION  
FOR SUMMARY JUDGMENT**

Hearing Date: February 27, 2007  
Time: 9:00 am  
Courtroom: 8  
Judge: Hon. James Ware

In re: County of Monterey Initiative and Referendum  
Plaintiffs Rangel, *et al.*, Memo. In Opposition to *Melendez* Plaintiffs  
and *Rancho San Juan Opposition Coalition* Plaintiffs' Motion  
for Summary Judgment, Civ. Act. Nos. C 06-02202 JW; C 06-01407 JW

1 The Rangel Plaintiffs oppose the Motion for Summary Judgment and the Motion for  
2 Injunctive Relief filed by the Melendez and Rancho San Juan Opposition [hereinafter cited as  
3 Rancho San Juan] Plaintiffs. The Rangel Plaintiffs contend that the translation requirements of  
4 Section 203 of the 1965 Voting Rights Act, as amended in 2006, 42 U.S.C. § 1973aa-  
5 1a(c)[hereinafter referenced as Section 203], apply to citizen circulated referenda petitions. The  
6 Melendez and Rancho San Juan Plaintiffs contend that such citizen circulated referenda petitions  
7 are not subject to these translation requirements. However before addressing the merits of this  
8 issue, the Court will need to determine whether a Three Judge Court should be convened to  
9 resolve this Section 203 case.

10 As to the convening of a Three Judge Court, the Rangel Plaintiffs presented their  
11 arguments in their opening brief and will only refer to one of the arguments. The construction  
12 urged by the Melendez and Rancho San Juan Plaintiffs in opposing the convening of a Three  
13 Judge Court will result in an anomalous result. This anomalous result is achieved if there is a  
14 Section 203 case filed by private plaintiffs and no Three Judge Court is convened and a similar  
15 lawsuit is filed by the United States Attorney General against the same jurisdiction and a Three  
16 Judge Court is convened. When both cases are consolidated a Three Judge Court will need to be  
17 convened and be present when the United States Attorney presents an argument regarding a  
18 construction of Section 203 and will need to be recused when a similar argument is presented by  
19 the private plaintiffs. Under such a scenario a judgment will be rendered by both a Three Judge  
20 Court and a single judge Court addressing the same legal issue. Such an anomalous result  
21 illustrates the difficulty presented by construing the jurisdictional statute, Section 204 of the  
22 Voting Rights Act, 42 U.S.C. § 1973aa-2, differently depending upon the status of the plaintiff.

23 Moreover, the basis for any Section 203 case is dependent upon a jurisdictional statute  
24 conferring authority on a federal court to adjudicate any claims involving Section 203. As  
25 previously noted in the opening brief, that jurisdictional statute is Section 204. Since Section  
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204 does not explicitly permit private parties to initiate Section 203 actions, the basis for private party jurisdiction must be derived by implication as the United States Supreme Court concluded when construing Section 5, 42 U.S.C. § 1973c, of the Voting Rights Act. *Allen v. State Board of Elections*, 393 U.S. 544 (1969).

Another argument presented by the Melendez and Rancho San Juan Plaintiffs opposing the convening of a Three Judge Court is without merit. The Melendez and Rancho San Juan Plaintiffs contend that the presence of the removed action that was consolidated with the Rangel Plaintiffs' litigation inoculates the Rangel action from the application of the Three Judge Court statute. Such an argument ignores the explicit congressional judgment that statutory constructions and application of Section 203 should be determined by a Three Judge Court. Thus as long as a federal action is present in federal court and that federal action is consolidated with other cases that raise state law issues that implicate the construction and application of Section 203, a Three Judge Court should be convened to adjudicate the Section 203 issue. The application of Section 203 as construed by the Three Judge Court then becomes the law of the case with respect to any of the other consolidated actions where the Section 204 translation requirements may be implicated. In summary these arguments opposing the convening of a Three Judge Court in this action are without merit. For these reasons the Court should consistent with the requirements of 28 U.S.C. § 2284 request the convening of a Three Judge Court.

As to the arguments on the merits, the Rangel Plaintiffs have reviewed the arguments presented by Monterey County in its Memorandum of Points and Authorities in Support of Summary Judgment in Referendum Cases and in Support of Dismissal in the Melendez Initiative Case, Civil Action 5:06-cv-02202-JW, Docket Item No. 51, filed February 7, 2007. These arguments both support the Rangel Plaintiffs' motion for summary judgment and serve as a basis for opposing the Melendez and Rancho San Juan Plaintiffs motions for summary judgment and request for injunctive relief. Rather than repeat these arguments in this filing, for purposes of

1 both supporting the Rangel Plaintiffs' motion for summary judgment and opposing the Melendez  
2 and Rancho San Juan Plaintiffs' motions for summary judgment and for injunctive relief, the  
3 Rangel Plaintiffs adopt the arguments as they relate to the question of whether Section 203  
4 applies to referenda petitions, including the arguments that the statutory language of Section 203  
5 requires the translation of referenda petitions into Spanish, that the administrative practices and  
6 procedures promulgated by the United States Attorney General also requires the translations of  
7 referenda petitions into Spanish, that Congress in reauthorizing the Voting Rights Act in 2006  
8 did not alter the translation requirement of Section 203 as it applies to referenda petitions, that  
9 *Padilla v. Lever*, 463 F.3d 1046 (2006) does not apply to referenda petitions. For these reasons,  
10 the Melendez and Rancho San Juan Plaintiffs' motions for summary judgment and a preliminary  
11 injunction should be denied.

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13 Date: February 13, 2007

Joaquin G. Avila  
Attorney for the Plaintiffs

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16 /s/ Joaquin G. Avila

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