

FOR PUBLICATION

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

CHAMBER OF COMMERCE OF THE  
UNITED STATES; CALIFORNIA  
CHAMBER OF COMMERCE;  
EMPLOYERS GROUP; CALIFORNIA  
HEALTHCARE ASSOCIATION;  
CALIFORNIA MANUFACTURERS AND  
TECHNOLOGY ASSN.; CALIFORNIA  
ASSOCIATION OF HEALTH FACILITIES;  
CALIFORNIA ASSOCIATION OF HOME  
& SERVICES FOR THE AGING; BETTEC  
CORPORATION; MARKSHERM  
CORPORATION; ZILACO INC., ZILACO;  
DEL RIO HEALTHCARE, INC.;  
BEVERLY HEALTH & REHABILITATION  
SERVICES, INC. Dba Beverly Manor  
Costa Mesa; INTERNEXT GROUP,  
*Plaintiffs-Appellees,*

AMERICAN FEDERATION OF  
LABOR AND CONGRESS OF  
INDUSTRIAL ORGANIZATIONS;  
CALIFORNIA LABOR FEDERATION,  
AFL-CIO,  
*Intervenors-Appellants,*

v.

No. 03-55166  
D.C. No.  
CV-02-00377-GLT

BILL LOCKYER, Attorney General,  
in his capacity as Attorney  
General of the State of California;  
DEPARTMENT OF HEALTH SERVICES;  
FRANK G. VANACORE, as the Chief  
of the Audit Review and Analysis  
Section of the California  
Department of Health Services;  
DIANA M. BONTA, Diana M. Bonta,  
R.N., Dr., P.h.D, as the Director  
of the California Department of  
Health Services,

*Defendants.*

CHAMBER OF COMMERCE OF THE  
UNITED STATES; CALIFORNIA  
CHAMBER OF COMMERCE;  
EMPLOYERS GROUP; CALIFORNIA  
HEALTHCARE ASSOCIATION;  
CALIFORNIA MANUFACTURERS AND  
TECHNOLOGY ASSN.; CALIFORNIA  
ASSOCIATION OF HEALTH FACILITIES;  
CALIFORNIA ASSOCIATION OF HOME  
& SERVICES FOR THE AGING; BETTEC  
CORPORATION; MARKSHERM  
CORPORATION; ZILACO INC., ZILACO;  
DEL RIO HEALTHCARE, INC.;

No. 03-55169  
D.C. No.  
CV-02-00377-GLT  
ORDER

BEVERLY HEALTH & REHABILITATION SERVICES, INC. Dba Beverly Manor Costa Mesa; INTERNEXT GROUP,  
*Plaintiffs-Appellees,*  
and  
AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS; CALIFORNIA LABOR FEDERATION, AFL-CIO,  
*Intervenors,*  
v.  
BILL LOCKYER, Attorney General, in his capacity as Attorney General of the State of California; DEPARTMENT OF HEALTH SERVICES; FRANK G. VANACORE, as the Chief of the Audit Review and Analysis Section of the California Department of Health Services; DIANA M. BONTA, Diana M. Bonta, R.N., Dr., P.h.D, as the Director of the California Department of Health Services,  
*Defendants-Appellants.*

Filed January 17, 2006

Before: Mary M. Schroeder, Chief Judge.

**ORDER**

Upon the vote of a majority of nonrecused regular active judges of this court,<sup>1</sup> it is ordered that this case be reheard by the en banc court pursuant to Circuit Rule 35-3. The three-judge panel opinion shall not be cited as precedent by or to this court or any district court of the Ninth Circuit, except to the extent adopted by the en banc court.

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<sup>1</sup>Judge Berzon is recused.







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