

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,¹ 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.

¹Judge Berzon is recused.

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