

**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 February 9, 2006

Before: Mary M. Schroeder, Chief Judge.

**ORDER**

Upon the vote of a majority of the en banc court, the opinion and dissent filed on September 6, 2005, slip op. 12167, and appearing at 422 F.3d 973 (9th Cir. 2005), are withdrawn.







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