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SABAS RANGEL and MARIA BUELL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE COURTHOUSE

SABAS RANGEL and MARIA BUELL,

Plaintiffs,

vs.

COUNTY OF MONTEREY, a
governmental corporation formed
under the laws of the State of California;
THE BOARD OF SUPERVISORS OF
THE COUNTY OF MONTEREY; and
ANTHONY ANCHUNDO, in his
official capacity as the Registrar of
Voters for the County of Monterey,

Defendants.

CASE NO.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

**[Certification as to Interested Entities or
Persons]**

Plaintiffs hereby allege as follows:

INTRODUCTION

1. This action is brought under the Voting Rights Act of 1965, 42 U.S.C. § 1973aa-1a(c), and 42 U.S.C. §§ 1983 and 1988. This action seeks declaratory and injunctive relief against Monterey County, the Monterey County Board of Supervisors, and its election officials (sometimes hereinafter collectively “Defendants”). Defendants are charged with overseeing the referendum-election process in Monterey County.

2. This is an action to compel Defendants to ensure that referendum petitions, and all textual requirements relating to the referendum process, are printed and circulated in Spanish, a designated minority language, as well as in English, because the County is required to provide bilingual voting materials pursuant to the Voting Rights Act of 1965, 42 U.S.C. § 1973 *et seq.*, as amended. County’s failure to ensure the promulgation and circulation of referendum petitions and their related textual requirements in Spanish, as required by 42 U.S.C. § 1973aa-1a(c), deprived Plaintiffs of their ability to participate fully in the electoral process.

PARTIES

3. Plaintiff Sabas Rangel (“Rangel”) is, and at all times relevant hereto was, a citizen of the United States, and a citizen and resident of the County of Monterey, State of California. Rangel is registered to vote in the County. Rangel’s primary language is Spanish, and Rangel speaks no English whatsoever. Rangel is “limited-English proficient” under Section 203 of the federal Voting Rights Act of 1965, 42 U.S.C. § 1973aa-1a(b)(3)(B). Rangel is a 66-year old retiree living in the County. Rangel is concerned about quality of life, housing, and affordability issues in the County, and to this end is an active civic participant on, and attempts to keep himself informed on, political and governmental issues that affect him and his family.

4. Plaintiff Maria Buell (“Buell”) is a citizen and voter in Monterey County. Buell speaks both English and Spanish fluently. Buell is and has been active in civil rights causes for many years and to this end has and does seek to enforce the provisions of the Voting Rights Act of 1965 through its enforcement provisions. As a resident voter and taxpayer of the County, Buell has standing to prosecute this action based on her interest and right to not be subject to an illegal

1 election.

2 5. Defendant County of Monterey is, and at all relevant times was, an
3 independent governmental arm of the State of California and was formed pursuant to the laws of the
4 State of California. The County is under a mandatory, non-discretionary legal obligation to refrain
5 from violating the laws of the United States and California. The County is a “covered jurisdiction”
6 under Section 5 of the Voting Rights Act of 1965, codified at 42 U.S.C. § 1973b(b). *See, e.g., Lopez*
7 *v. Monterey County* (1996) 519 U.S. 9, 11. Because of that designation, the County is subject,
8 among other restrictions, to pre-clearance from the United States Department of Justice or the United
9 States District Court for the District of Columbia if it enacts or seeks to administer changes to its
10 voting practices. In addition, the County is also a “covered jurisdiction” under Section 203 of the
11 Voting Rights Act, codified at 42 U.S.C. § 1973aa-1a, in that five percent or more of the voters in
12 the County are members of a single language minority (namely, Spanish), and the illiteracy rate
13 among this group is higher than the national average. 28 C.F.R.. § 55, App. (2005). As a result of
14 being covered by Section 203, the County is subject to the bilingual election provisions of the Voting
15 Rights Act of 1965, 42 U.S.C. § 1973aa-1a(c); 28 C.F.R. Part 55, App. (2005).

16 6. Defendant Board of Supervisors of the County of Monterey (“Board of Supervisors”)
17 is, and at all relevant times was, the governing body of the County. The Board of Supervisors has
18 a mandatory, non-discretionary legal obligation to refrain from violating the laws of the United
19 States and the State of California.

20 7. Defendant Anthony Anchundo (“Anchundo”) is, and at all relevant times was, the
21 Registrar of Voters of the County. In that capacity, Anchundo is charged with the duty of overseeing
22 and ensuring the legality of public elections within the County, including the election scheduled for
23 June 6, 2006. Anchundo is named in this action solely in his official capacity as the Registrar of
24 Voters of the County. Anchundo has a mandatory, non-discretionary legal obligation to refrain from
25 violating the laws of the United States and the State of California.

26 JURISDICTION AND VENUE

27 8. This court has original jurisdiction under 28 U.S.C. §§ 1331 (federal question),
28 1343(a)(3) and (4) (civil rights), and 2201 and 2202 (declaratory relief). This action arises under 42

1 U.S.C. §§ 1973aa-1a, 1983, and 1988.

2 9. Venue is proper in the Northern District of California pursuant to 28 U.S.C. §
3 1391(b)(1) (at least one defendant resides in this district and all defendants reside in this state) and
4 28 U.S.C. § 1391(b)(2) (a substantial part of the events or omissions giving rise to the case occurred
5 in this district).

6 FACTUAL ALLEGATIONS

7 10. On November 7, 2005, the Board of Supervisors adopted Resolution No. 05-305 (the
8 "Resolution"), which implemented certain amendments to the Monterey County General Plan
9 ("GPA's") in conjunction with its approval of a revised Rancho San Juan Specific Plan ("Specific
10 Plan") for an area located near Salinas, California. The GPA's were adopted in order to increase the
11 consistency of the Specific Plan with the Monterey County General Plan. Specifically, the
12 Resolution amended (1) Monterey County General Plan Goal No. 30 and Policy Nos. 25.1.1,
13 30.0.3, and 39.2.1; (2) the Greater Salinas Area Plan Land Use Plan (Figure 13), Policy Nos.
14 26.1.4.1, 39.1.4.1, 40.1.1.1, Part II, Chapter V, defining commercial land use designations in the
15 Area Plan; and (3) amended certain guidelines in the Rancho San Juan Area of Development
16 Concentration Development Guidelines and Principles adopted pursuant to Policy 26.1.4.1.

17 11. After the adoption of the Resolution, various individuals and entities who are
18 actively and openly opposed to adoption of the Specific Plan circulated a referendum petition
19 ("Referendum") protesting the adoption of the Resolution. The proponents of the Referendum
20 sought to have the Board entirely repeal or rescind the Resolution or, alternatively, place the
21 Referendum on the County ballot for the County election scheduled for June 6, 2006.

22 12. Pursuant to California Elections Code §§ 9141 and 9144, the proponents had thirty
23 days to collect the requisite number of signatures in support of the Referendum and present the
24 Referendum to the County for filing. On or about November and December of 2005, the proponents
25 of the Referendum undertook this signature-gathering effort. To that end, the proponents and their
26 agents used volunteer and professional, paid signature gatherers to circulate the Referendum
27 throughout the County. No circulator circulated a copy of the Referendum, in whole or in part, in
28 Spanish. Rather, all copies and versions of the Referendum that were circulated were printed only

1 in English, and not in Spanish.

2 13. Plaintiffs allege that the Referendum petition was circulated solely in English, and
3 not in Spanish. As a direct consequence of the failure to translate the material into Spanish, Spanish-
4 speaking residents of Monterey County were denied their fundamental right to be informed of the
5 content, import, and nature of the Petition.

6 14. Plaintiff Rangel is active in County civic and political issues concerning quality of
7 life, housing, and affordability, and to that end he attempts to participate in, and keep himself
8 informed on, political and governmental issues that affect he and his family. Rangel speaks only
9 Spanish and speaks no English whatsoever. After becoming aware in late 2005 that the Referendum
10 was in circulation throughout the County, Rangel attempted to participate in the County's electoral
11 process by informing himself of the character and content of the Referendum. However, he could
12 not locate a copy of the Referendum that was printed and circulated in Spanish. In fact, no section
13 of the Referendum petition was printed and circulated in Spanish. As such, Rangel was effectively
14 prevented from exercising his fundamental petition right guaranteed to him under the California
15 Constitution. The inability of Rangel to effectively participate in the electoral process because the
16 Referendum was not printed and circulated in Spanish was a violation of the Voting Rights Act.

17 15. Plaintiff Buell is a citizen and voter in Monterey County. Buell is and has been
18 active in civil rights causes for many years and to this end has and does seek to enforce the
19 provisions of the Voting Rights Act of 1965 through its enforcement provisions. As a resident voter
20 and taxpayer of the County, Buell has standing to prosecute this action based on her interest and right
21 to not be subject to an illegal election.

22 16. In a companion case, *Madrigal v. County of Monterey*, decided March 23, 2006, the
23 district court held that the an initiative petition that sought to retroactively amend the County's
24 General Plan and require a public election for general plan amendments and zoning changes
25 (including the GPA's in the Resolution subject to this Referendum) that was circulated in English,
26 but not in Spanish, violated the Voting Rights Act. The plaintiffs alleged that the failure to provide
27 the initiative petition in Spanish denied them their right to participate in the initiative process. The
28 district court held that the failure to translate the initiative materials into Spanish violated the Voting

1 Rights Act and permanently enjoined the County from adopting the initiative or placing it on the
2 June 6, 2006 ballot.

3 17. On December 6, 2005, the petition was filed with the Registrar of Voters, Anthony
4 Anchundo. On January 18, 2006, Anchundo certified the Petition as having been signed by the
5 requisite number of voters as required by California Elections Code §§ 9114 and 9146.

6 18. The Board of Supervisors received the Registrar's certification at its regular meeting
7 on January 24, 2006. At this meeting, the Board declined to repeal or reconsider the Resolution, and
8 instead adopted a resolution calling for an election on June 6, 2006 to submit to voters the question
9 of whether or not to approve the November 7, 2005 Resolution.

10 19. Under federal law, the County, Anchundo, and the proponents of the Referendum are
11 required to ensure that the Referendum was circulated to the voting public in Spanish as well as
12 English. The operative provision of federal law in this regard is Section 203 of the Voting Rights
13 Act, 42 U.S.C. § 1973aa-1a. Subsection (c) of that section reads as follows:

14 Whenever any State or political subdivision subject to the prohibition of subsection (b) of
15 this section provides any registration or voting notices, forms, instructions, assistance, or
16 other material or information relating to the electoral process, including ballots, it shall
provide them in the language of the applicable minority group as well as in the English
language.

17 42 U.S.C. § 1973aa-1a(c).

18 20. Pursuant to federal regulations, the County is a political subdivision that is "subject
19 to...subsection (b)" of section 203. 28 C.F.R. § 55, App. (2005). Generally, a political subdivision
20 is subject to subsection (b) if (1) five percent or more of the voters in the political subdivision are
21 members of a single language minority that speaks very limited English, and (2) the literacy rate
22 among this group is higher than the national average. 42 U.S.C. § 1973aa-1a(b)(2)(A). With respect
23 to Monterey County, the "single language minority" at issue is Spanish.

24 21. Under recent Ninth Circuit case law, a political subdivision that is covered by section
25 203 of the Voting Rights Act is required to ensure that petitions, such as recall petitions and initiative
26 petitions, that are circulated to eligible voters for signature, are presented in the language of the
27 applicable minority under subdivision (b) of that section. *Padilla v. Lever* (9th Cir. 2005) 429 C.3d
28

910 [stating rule]; *see also by analogy United States v. Berks County* (2003 E.D. Pa.) 250 F.Supp.2d 525, 536 (“[T]he right to vote means more than the mechanics of marking a ballot or pulling a lever. Here, plaintiffs cannot cast an informed or effective vote without demonstrating an ability to comprehend the registration and election forms and the ballot itself....Such an election process cannot withstand scrutiny under the Voting Rights Act.”). As recently as January 17, 2006, the U.S. District Court for the Central District of California applied *Padilla* and issued a preliminary injunction enjoining the City of Rosemead from proceeding with a recall election on the ground that the recall petition was not circulated in Spanish, but only in English. Order on Preliminary Injunction, *Imperial v. Castruita*, CV 05-8940-RGK (Cwx) (C.D. Cal. Jan. 17, 2006). Like the English-only recall and initiative petitions in *Padilla* and *In re County of Monterey Initiative Matter*, the circulation of the Referendum Petition in English only denied Plaintiffs their federally-protected right to choose between two alternatives: (1) repealing the Resolution through the Referendum process, and (2) not repealing the Resolution by not signing the petition. *Padilla*, 429 F.3d at 921; Order on Preliminary Injunction, *In re County of Monterey Initiative Matter*, CV 05-8940-RGK (CWx) at p. 8.

22. In this case, the applicable minority language for the County is Spanish, yet the Referendum was not presented to the voters in that language. The proponents of the Referendum failed to circulate the petition in Spanish despite the fact that the *Padilla* decision was handed down in November 2005, just as the proponents signature-gathering efforts were commencing. As a result of this failure, a substantial portion of the County’s population was effectively excluded from the electoral process relating to the Referendum approval.

23. When the proponents presented the Referendum to the County Election Department on December 6, 2005, the County and Anchundo were required to review the petition for legal compliance and, assuming it was compliant with the applicable legal requirements, to process the Referendum pursuant to the applicable provisions of the Elections Code. Cal. Elec. Code §§ 9113-9114, 100-101, 104. Under settled California law, if the Referendum did not comply with a specified format, content, and text requirements, the County and Anchundo were under a ministerial, non-discretionary legal obligation to refuse to process or take any further action on the Referendum,

1 and to not adopt or schedule an election on the Referendum. Elec. Code § 1946; *see also Padilla*,
 2 429 F.3d at 921 (“Election officials are charged with ensuring that the proposed petition conforms
 3 to the requirements of the Elections Code in both form and content.”).

4 24. Despite the legal insufficiencies that appeared on the face of the Referendum,
 5 including the Referendum’s failure to comply with the Voting Rights Act of 1965 by not being
 6 printed and circulated in Spanish as required by law, on or about January 18, 2006, Anchundo
 7 certified the Referendum as containing the requisite number of signatures for either adoption by the
 8 County or inclusion on the County ballot in the June 6, 2006 election. In response to that
 9 certification, the Board of Supervisors, on or about January 24, 2006, declined to repeal or rescind
 10 the November 7, 2005 Resolution and instead placed the Referendum on the June 6, 2006 election
 11 ballot.

12 **FIRST CLAIM FOR RELIEF**

13 **(For Declaratory Relief Against All Defendants Under 28 U.S.C. §§ 2201 and 2202)**

14 25. Plaintiffs hereby incorporate by reference each and every allegation contained in
 15 Paragraphs 1 through 24, inclusive, of this Complaint, as if fully set forth herein.

16 26. Plaintiffs contend that the Referendum presented to the voting public for signature
 17 is invalid under Section 203 of the Voting Rights Act of 1965 because they were printed and
 18 circulated only in English, and not in Spanish. Therefore, the Referendum cannot legally be adopted
 19 by the County or presented to the County voters in the June 6, 2006 election.

20 27. Plaintiffs are informed and believe, and based thereon allege, that Defendants
 21 contend that (a) the Voting Rights Act of 1965 did not require that the Referendum petition be
 22 printed and circulated in Spanish, as well as English, (b) the Referendum is not invalid on that basis,
 23 and (c) the Referendum was properly placed on the ballot in the June 6, 2006 election.

24 28. An actual controversy has therefore arisen between Plaintiffs and Defendants
 25 concerning the validity of the Referendum under Section 203 of the Voting Rights Act of 1965, in
 26 light of the fact that the Referendum was not printed and circulated in Spanish.

27 29. Plaintiffs are entitled to a declaratory judgment from this Court under 28 U.S.C. §§
 28 2201 and 2202, that (1) the Referendum presented to the voting public for signature is invalid under

1 Section 203 of the Voting Rights Act of 1965, because it was printed and circulated only in English,
2 and not in Spanish, and (2) the Referendum therefore cannot legally be presented to the County
3 voters.

4 **SECOND CLAIM FOR RELIEF**

5 **(For Injunctive Relief Against All Defendants Under 42 U.S.C. §§ 1973aa-1a, 1983, and**
6 **1988, and 28 U.S.C. §§ 1343 and 2202)**

7 30. Plaintiff hereby incorporates by reference each and every allegation contained in
8 Paragraphs 1 through 29, inclusive, of this Complaint, as if fully set forth herein.

9 31. At the present time, the Referendum has been certified by Anchundo and the Board
10 of Supervisors has placed the Referendum on the ballot for the June 6, 2006 election. Because the
11 Referendum was not circulated for signature in Spanish, and thereby excluded many Spanish-
12 speaking individuals from the electoral and public-debate process relating to the qualification of the
13 Referendum for adoption, allowing the Referendum to proceed to a vote would violate the Voting
14 Rights Act of 1965.

15 32. Defendants have acted under color of statutes, regulations, customs, and usages of
16 the State of California and the County. By their actions, Defendants have deprived Plaintiffs and
17 other registered voters of the County of certain rights, privileges, and immunities secured to them
18 by the United States Constitution and United States laws, including, but not limited to, the right to
19 vote, the right to participate fully, equally, and fairly in the political process, and the right to not be
20 subject to illegal elections.

21 33. Plaintiffs have no adequate remedy at law to secure the right to fully participate
22 in the political process as guaranteed to them by the Voting Rights Act of 1965. Unless this Court
23 enjoins Defendants from processing, certifying, and/or adopting the Referendum, and from allowing
24 the Referendum to be placed on the ballot in future County elections without first properly
25 circulating the Referendum in compliance with the Voting Rights Act of 1965 and state law,
26 Plaintiffs will be irreparably harmed by their exclusion from the electoral and public-debate process
27 on this issue.

28 34. Plaintiffs are entitled to the judgment of this Court enjoining Defendants from

1 processing, certifying, and/or adopting the Referendum, and from allowing any Referendum to be
2 placed on the ballot in future County elections without first properly circulating such Referendum
3 in compliance with the Voting Rights Act of 1965 and state law.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays as follows:

6 1. For a declaratory judgment from this Court, declaring (a) that the Referendum
7 presented to the voting public for signature and subsequently placed on the June 6, 2006 ballot is
8 invalid under Section 203 of the Voting Rights Act because it was printed and circulated in English,
9 and not in Spanish, and (b) that the Referendum therefore cannot legally be presented to the County
10 voters;

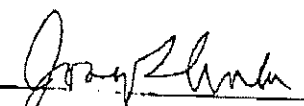
11 2. For preliminary and permanent injunctive relief enjoining Defendants from allowing
12 Referenda to be placed on the ballot in future County elections without first properly circulating said
13 Referenda in compliance with the Voting Rights Act of 1965 and state law;

14 3. For attorneys' fees and costs pursuant to federal statute; and

15 4. For such other and further relief as the Court deems just and proper.

16
17 Dated: March 27, 2006

JOAQUIN G. AVILA

18
19 By: 
20

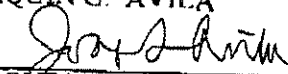
21 JOAQUIN G. AVILA
22 Attorneys for Plaintiff
23 SABAS RANGEL and MARIA BUELL
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CERTIFICATION AS TO INTERESTED ENTITIES OR PARTIES

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no financial or other interest to report.

Dated: March 27, 2006

JOAQUIN G. AVILA

By: 

JOAQUIN G. AVILA

Attorneys for Plaintiff

SABAS RANGEL and MARIA BUELL

NOTICE OF PENDENCY OF OTHER ACTION OR PROCEEDING

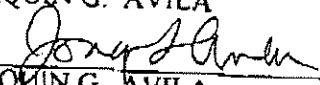
Pursuant to Civil L.R. 3-13, Plaintiff hereby notifies the Court and Defendants of a related action, filed in U.S. Federal District Court for the Northern District of California, San Jose Courthouse on February 24, 2006. The action, entitled *Mudrigal, et al v. County of Monterey, et al*, Case No. C06-01407, was filed by several Spanish-speaking registered voters of Monterey County. The action alleged (1) violations of the Voting Rights Act of 1965, codified at 42 U.S.C. § 1973 *et seq*, and (2) deprivation of rights, privileges, and immunities by the County of Monterey pursuant to 42 U.S.C. §§ 1983 and 1988.

The action arose from the County's certification (and placement on the June 6, 2006 ballot) of an Initiative Petition circulated by, among others, opponents of Resolution No. 05-305 of the Board of Supervisors of Monterey County (the resolution that is the subject of the Referendum that is the basis of the present action). Specifically, the Complaint alleged that the failure of the initiative proponents to translate the initiative petition into Spanish, coupled with the subsequent certification of the initiative by the County, constituted a violation of the Voting Rights Act of 1965. On March 24, 2006, Judge James Ware granted the plaintiffs' request enjoining the County from processing, certifying, or adopting the initiative and from placing it on the June 6, 2006 ballot.

The related action is related to the present in action in that (1) both involve petitions seeking to repeal or otherwise modify Resolution No. 05-305, enacted November 7, 2005 by the Board of Supervisors, and (2) both allege violations of the Voting Rights Act. However, coordination or consolidation of proceedings is not necessary as the related action has been decided.

Dated: March 27, 2006

JOAQUIN G. AVILA

By: 

JOAQUIN G. AVILA

Attorneys for Plaintiff

SABAS RANGEL and MARIA BUELL