

## Ideologically-Based Efforts to Split the 9th Circuit Court of Appeals

*Don't like a court decision? Break up the court!*

### I. Statements from elected leaders, judges and editorial boards on the REAL motivation behind proposals to split the 9<sup>th</sup> Circuit:

- **Reagan-appointed 9th Circuit Judge Kozinski, quoted by Howard Mintz, *Appeals court faces split*, San Jose Mercury News (Nov. 7, 2005)** ("You'd have to believe in the tooth fairy to say this has nothing to do with politics.")
- **Prof. Erwin Chemerinsky Forum Column, *Splitting 9th Circuit is costly, conservative ploy*, Daily Journal (Nov. 15, 2005)** ("The proposal to split the 9th U.S. Circuit Court of Appeals is a politically motivated attempt to make the federal courts of appeals much more conservative. . . . There is no doubt about the political motivation behind the effort to split the 9th Circuit. . . . Indeed, the new 12th Circuit might well be the most politically conservative federal court of appeals in the country. At the same time, Republicans would create enough new appellate judgeships for the reconstituted 9th Circuit to significantly increase conservative influence there.") [Read More.](#)
- **John C. Yoo and Eric M. George, San Francisco Chronicle OPEN FORUM, *Splitting the U.S. Court of Appeals for the Ninth Circuit: A flawed plan to isolate California* (Nov. 23, 2005)** ("a split is improperly motivated. Many critics of the Ninth Circuit oppose what they see as excessively liberal decisions of federal judges located in California, and urge a split in order to quarantine such rulings in the Golden State. We think that it would be a mistake to begin drawing up the jurisdiction of the federal courts in an effort to shape ideological outcomes of their decisions.") *John C. Yoo is a law professor at UC Berkeley and formerly a Justice Department attorney in the George W. Bush administration. Eric M. George is a trial lawyer in Southern California and former legal counsel to the U.S. Senate Judiciary Committee and to Gov. Pete Wilson.* [Read More.](#)
- **Senator John Ensign, Press Release, *ENSIGN INTRODUCES BILL TO SPLIT NINTH CIRCUIT COURT* (June 23, 2005)** ("Ensign also expressed concern over the court's ideological leaning as part of his motivation to get Nevada out of the jurisdiction of the Ninth Circuit, citing specifically the court's ruling that the Pledge of Allegiance is unconstitutional because it contains the phrase 'under God.' 'Many of the court's rulings reflect a set of values that are odds with the majority of the people of Nevada,' Ensign said. 'I look forward to seeing Nevada's residents served by a new court in a new location with a viewpoint closer to their own.'") [Read More.](#)
- **SEN. ORRIN HATCH, R-Utah, quoted in PBS Newshour, *CONTROVERSIAL COURT* (Jan. 17, 2005):** ("It is also a court that is seriously out of balance, with 17 of its 24 active judges appointed by Democratic presidents. It is about time that we let the 9th Circuit Court of Appeals know that, as the most reversed court in the country, to think twice before they do something like this.") [Read More.](#)

- **Fairbanks Daily News-Miner, *House votes to split 9th Circuit into three (Oct. 6, 2004)***: (“Rep. Don Young, R-Alaska, issued a news release that clearly linked his vote for the amendment to his displeasure with the court's rulings. ‘This is good for the state of Alaska because we will no longer be governed by adverse court decisions made for San Francisco and that way of life,’ Young said. He cited 9th Circuit decisions against California's three-strike law, the Pledge of Allegiance in public schools and hatchery salmon releases in the official wilderness area covering Tustumena Lake on Alaska's Kenai Peninsula.”) [Read More.](#)
- **The Register-Guard [OR] Editorial *A court divided (Nov. 28, 2005)*** (“There may well be sound reasons for breaking up the 9th U.S. Circuit Court of Appeals. But an ideologically driven agenda to reform the federal judiciary isn't one of them. . . . And they would dearly love to give President Bush an opportunity to appoint judges to a new appellate court.”) [Read More.](#)
- **San Francisco Chronicle [CA] Editorial *Don't split the Ninth Circuit (Nov. 20, 2005)*** (“it is purely political meddling in court affairs. . . . The GOP grumbling, however, is based on more substantial matters: court-ordered limits on fishing, grazing rights and mining. Also the Ninth Circuit has barred death sentences and anti-terrorism rules.”) [Read More.](#)
- **The Modesto Bee [CA] Editorial *9th Circuit alteration an attempt at revenge (Nov. 14, 2005)*** (“This is a political attempt to alter the court to suit whims of certain representatives and exact revenge for decisions.”) [Read More.](#)
- **Seattle Post-Intelligencer [WA] Editorial *Federal Courts: Don't split the 9th (Nov. 9, 2005)*** (“Conservative ideologues . . . are also engaged in an attempt to make federal court decisions in the West more conservative. . . Northwest members of Congress should stand firm against ideological redrawing of the circuit. Even among a run-amok majority, there must be some scruples about a transparently partisan attempt to dictate court philosophy from Congress.”) [Read More.](#)
- **Juneau Empire [AK] Editorial *The real 9th Circuit Court of Appeals debate (Oct. 16, 2005)*** (“breaking up the 9th Circuit Court has nothing to do with efficiency and everything to do with politics. Conservatives want to split the circuit because they think it could lead to rulings more in line with their own beliefs. They're trying to force their agenda onto a system that's built on the law, not on a party platform.”) [Read More.](#)
- **Honolulu Star-Bulletin Editorial, *Partisan motives behind proposed 9th Circuit breakup (June 21, 2005)***(“the proposed breakup is motivated solely by ideology and should be rejected.”) [Read More.](#)
- **Sacramento [CA] Bee Editorial, *A court to keep: There's no reason to split 9th Circuit (Feb. 13, 2005)*** (“This political attempt to alter the court to suit political whims of certain ideologues smacks of President Franklin Roosevelt's attempted "court packing" scheme in 1937.... Ideologues just don't like some of the circuit's decisions.”) [Read More.](#)
- **Tucson Citizen, [AZ] Editorial, *Philosophical motives drive fed court split (Oct. 8, 2004)*** (“Rep. Rick Renzi, an Arizona Republican . . . cited a 9th Circuit ruling on grazing and another that removed the phrase "under God" from the Pledge of Allegiance. "These contemptuous

judgments tear at the moral fabric of our nation, disregard the will of the people and force a corrupt ideology upon our society," he fustigated. Give credit to Renzi for honesty. He admits he wants to break up the 9th Circuit because he doesn't agree with its judicial decisions. . . .The House vote to break up the 9th Circuit is a blatant attempt to override the separation of the branches of government.)

- **Wendy Holton Op-ed, The Montana Lawyer, *If it's not broke, don't fix it: Why splitting the 9th Circuit would be bad for Montana (June/July 2005)*** (“the basic impulse behind these bills does not appear to be improved judicial efficiency but an attempt by lawmakers to get different outcomes in land use, Indian rights, environmental and constitutional law decisions with which they are dissatisfied on policy grounds – in other words, by playing politics with judicial geography.”) [Read More.](#)

## **II. Statements about how proposals to split the 9th Circuit have ALWAYS been ideologically-based:**

- **Seattle Post-Intelligencer Editorial, *California Appeal: Judicial reform that's not (June 21, 2005)*** (“The reason that the issue of splitting the circuit comes up repeatedly is because of dissatisfaction in some areas with some of our decisions," Chief Judge Mary Schroeder told The New York Times ‘This has a long historic basis beginning with some fishing rights decisions in the '60s and going forward to the Pledge of Allegiance case and presently some of the immigration decisions.’) [Read More.](#)
- **Pete Wilson, as a Republican U.S. Senator from California** (he later served two-terms as Governor) condemned previous efforts to split the U.S. Ninth Circuit Court of Appeals as anti-"environmental gerrymandering." [Read More.](#)
- **Peter Chilson, High Country News, *A 'liberal' court gets some breathing room (Jan.19, 1998)*** (discussing then-Sen. Slade Gorton’s (R-WA) “dissatisfaction with the court dates back to the 1970s, when he was Washington’s attorney general. In a series of fruitless appeals to the 9th Circuit, he challenged a U.S. District Court decision upholding the claim of local tribes to 50 percent of the state’s salmon catch. Since Gorton became a U.S. senator in 1981, he has campaigned to split the 9th Circuit”) [Read More.](#)