

CALIFORNIA ACADEMY OF APPELLATE LAWYERS

February 24, 2004

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Senator Dianne Feinstein
United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Dear Senator Feinstein:

The California Academy of Appellate Lawyers, an organization of approximately 100 seasoned California attorneys practicing in state and federal appellate courts, vigorously opposes efforts in the present Congress to divide the Ninth Judicial Circuit.

There are two currently active bills to accomplish a division – S.B. 562, which would keep only California and Nevada in the Ninth Circuit and move all the other states and territories from the Ninth into a new Twelfth Circuit; and H.R. 2723, which would keep Arizona along with California and Nevada in the Ninth Circuit and create a new Twelfth Circuit for the remainder. The Academy makes no distinction among these bills, all of which are equally ill-advised – the differences between them are organizational (dealing with the inclusion or exclusion of Arizona in the proposed new Twelfth Circuit) and they should all be rejected.

Splitting the Ninth Circuit is a bad idea for many reasons, the most important of which is that the Ninth Circuit is doing very well as presently structured, except for being understaffed because of vacancies on the bench. By many statistical measures the Ninth is one of the more successful of the judicial circuits based upon absolute number of dispositions, ratio of dispositions to judges, and time from filing (or from submission) to disposition. It has a distinguished reputation for institutional adaptability and innovative response to changing circumstances. And it provides a unified body of law for the vital Pacific Rim economic area which would be impossible to duplicate under the proposed reorganization.

Proposals to split the Ninth Circuit have been put forward every year for more than a decade. Every year they are basically the same, and recycle the same tired arguments. Of these the most often repeated is that the Circuit is too big to operate effectively. This is quite untrue, as has been shown statistically year after year. Such difficulties of scale as there are would be

solved by filling the existing vacancies, and by adopting S.B. 920, the Federal Judgeship Act of 2003, which incorporates the Judicial Conference's requests for additional seats on all circuits.

In fact, the basic impulse behind all these bills is not improved judicial efficiency but an attempt by lawmakers (largely but not entirely from the Northwest) to change rulings on such issues as land use, Indian rights, the environment and constitutional law (currently, e.g., the pledge of allegiance decision) with which they are dissatisfied on policy grounds. By substituting a new, more conservative and tightly regional circuit they hope to effect changes in the law which they have insufficient support to make through legislative channels. This is an improper and dangerous interference with the judiciary for political purposes and should be resisted as a matter of principle. Indeed the White Commission observed:

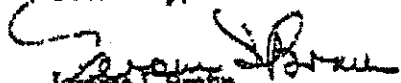
"There is one principle that we regard as undebatable: It is wrong to realign circuits (or not to realign them) and to restructure courts (or to leave them alone) because of particular judicial decisions or particular judges. This rule must be faithfully honored, for the independence of the judiciary is of constitutional dimension and requires no less."

Creating a new circuit would impose a need to duplicate staff, programs and facilities, including building an enormously expensive new courthouse, in order to accommodate a new circuit with 18% of the caseload of the existing Ninth Circuit. Hopes of reducing this completely unnecessary new expense by *ad hoc* cooperation between the chief judges of the newly constituted circuits are, as Chief Judge Schroeder says, "illusory."

The large majority of judges of the Ninth Circuit Court of Appeals, and the bench and bar of the Ninth Circuit generally, as well as the California delegation to the House of Representatives, have opposed past attempts to split the circuit "justified" on grounds no more persuasive than those offered in support of the current bills. Indeed claims that its size makes the Ninth Circuit bench "non-collegial" have been denied by the judges themselves. These are sufficient reasons to believe that the Ninth Circuit is working well as it is, and a sufficient ground for not forcing this change on an unwilling circuit.

Accordingly, the California Academy of Appellate Lawyers urges all members of the Senate Judiciary Committee take a position against S.B. 562 and, indeed, against any proposal to "reorganize" the Ninth Judicial Circuit. The Academy and its members stand ready to assist in opposing these bills in any useful way.

Yours truly,


Jerome I. Braun
for President James Martin
California Academy of Appellate Lawyers

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April 19, 2004

Via Facsimile 202-228-2258

Ms. Anjali Chaturvedi
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Ms. Chaturvedi:


This is a follow-on to our discussion this morning about supplementing the California Academy of Appellate Lawyers' letter of February 24, 2004 to Senator Feinstein stating the Academy's opposition to S. 2278.

The February 24th letter only spoke to H. 2723 and S. 562 but as we discussed this morning the Academy's reasons for opposing those bills apply *a fortiori* to S. 2278. As stated in the April 12, 2004 letter faxed to you:

"Although those letters [attached] were written with only those two bills in mind the arguments contained therein are equally applicable to S. 2278. Indeed, they are even more compelling in terms of a "cost-benefit" analysis regarding the additional cost and expense for establishing two new circuits. Specific data respecting an estimate of those costs will, I'm certain, be forthcoming from the Court itself before the record is closed."

Please call me if either I or the California Academy of Appellate Lawyers may be of further assistance.

Cordially,


Jerome I. Braun for James C. Martin
President of the California Academy
of Appellate Lawyers

JIB:so

cc: Honorable Mary M. Schroeder
Honorable Margaret M. McKeown
Cathy A. Catterson
James C. Martin
Robin Meadow

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