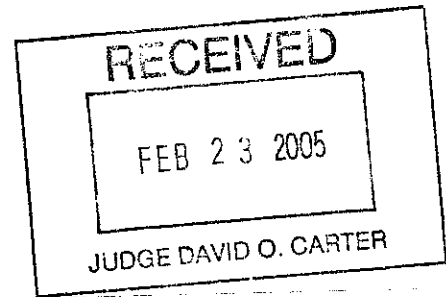




FEDERAL BAR ASSOCIATION ORANGE COUNTY CHAPTER

February 18, 2005



The Honorable Christopher Cox
One Newport Place, #420
Newport Beach, CA 92660

Re: *Proposals to Split the Ninth Circuit Court of Appeals*

Dear Representative Cox:

I am the president of the Federal Bar Association – Orange County Chapter ("FBAOC"), and write to inform you of the FBAOC's position on pending legislation that proposes to "split" the Ninth Circuit Court of Appeals in various ways. The Board of Directors of the FBAOC has voted unanimously to oppose any such legislation. With several hundred members, the FBAOC is comprised of lawyers who regularly practice in the federal courts in the Ninth Circuit. Our members – and the clients they serve – will be directly affected by any split of the circuit.

We understand that much has been written on this topic since proposals to split the Ninth Circuit have been recurring in various forms for at least a decade. While the proponents trumpet efficiency that a circuit split purportedly would accomplish and argue that the circuit as presently constituted is unwieldy, proposals to split the Ninth Circuit have at their core the proponents' disagreement with certain decisions rendered by the court. The FBAOC believes that splitting the Ninth Circuit is wrong on every level. But rather than repeat all the arguments against splitting the Ninth Circuit, this letter highlights several key reasons for the FBAOC's opposition to the split.

1. *Political considerations are not a proper basis to split any circuit.*
The 1999 Commission on Structural Alternatives for the Federal Courts of Appeals headed by former Associate Justice Byron White was adamant that it was not proper to split any circuit because of disagreements over its decisions. "There is one principle 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."

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Hon. Christopher Cox
February 18, 2005
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2. *The Ninth Circuit is performing well.* The Ninth Circuit is the largest circuit. But by all accounts, including any statistical measure, the Ninth Circuit is doing its job well. Based upon the number of dispositions, ratio of dispositions to judges, and the time from filing (or completion of briefing) to disposition, it is one of the more successful federal appellate courts. And the circuit is well-known for adopting innovative procedures to increase its efficiency.

3. *The Ninth Circuit provides a unified body of law.* The Ninth Circuit provides a unified body of law for the vital Pacific Rim economic area, something that would be difficult to achieve were it to be split.

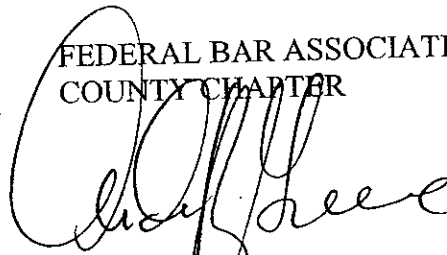
4. *Creating a new circuit would be expensive.* Splitting the Ninth Circuit would cause tremendous cost increases because it would require duplicating staff, facilities, and programs. Moreover, there is a built-in inefficiency for lawyers who must master different rules, procedures, and predilections of different courts. No doubt these increased costs would ultimately get passed along to the clients.

5. *A majority of judges and practicing lawyers oppose any split.* It is our understanding that a significant majority of the active Ninth Circuit judges oppose a split, as do the bench and bar of the Ninth Circuit generally. This is not because opponents of a split have any counter political agenda, but instead it is for the reasons set out above. That is certainly true of our organization. The 29 member Board of Directors of the FBAOC is made up of practitioners from large and small firms and governmental agencies, with varied civil and criminal practices, and of differing ethnic backgrounds and political leanings. Our Board also includes judges from the Southern Division of the Central District. Despite its diversity, our Board unanimously opposes any split of the Ninth Circuit.

Thank you for considering our comments. We would be pleased to provide you with any additional information that would assist you.

Yours truly,

FEDERAL BAR ASSOCIATION - ORANGE
COUNTY CHAPTER



Andra Batmash Greene
President