

GARY LOCKE  
Governor



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April 21, 2004

The Honorable Jeff Sessions  
Chairman, Subcommittee on Administrative Oversight and the Courts U.S.  
Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Senator Sessions:

I would ask that you include the enclosed testimony from Washington Governor Gary Locke in the record of the April 7, 2004 hearing before your Subcommittee, regarding proposals to restructure the U.S. Ninth Circuit Court of Appeals. Governor Locke provided the enclosed testimony to the White Commission on Structural Alternatives for the Federal Courts of Appeals in 1998. The Governor's views and concerns regarding a division of the Ninth Circuit have not changed since.

Thank you,



Jennifer Joly  
General Counsel



**TESTIMONY OF WASHINGTON GOVERNOR GARY LOCKE  
COMMISSION ON STRUCTURAL ALTERNATIVES  
FOR THE FEDERAL COURTS OF APPEALS  
(Wednesday, May 27, 1998)**

Mr. Justice White, and other distinguished members of the Commission, thank you for this opportunity to appear before you on the structure and administration of the Federal Courts of Appeals.

First and foremost, I do not believe that this is an issue that should be dealt with in political terms. Nationally, the courts should be structured and operated in a way that results in timely, efficient and uniform justice. Short-term political issues should not be given weight. Our Washington State Attorney General, Christine Gregoire is in agreement with me on these points.

An important question being addressed by the Commission is whether the 9<sup>th</sup> Circuit should be divided, so I will focus my testimony on that question.

Washington State has a strong interest in maintaining the current, unified structure of today's 9<sup>th</sup> Circuit.

Our state is part of a geographical, economic, political, and historical fabric that is woven from throughout the Western and Pacific states and territories. Looking back, it is evident to me that we have benefited from sharing the same court. Looking forward, to the future, I am even more convinced that a single body of precedent makes sense, and that splitting our circuit would be a move in the wrong direction.

Washington is tied to other states and territories in the 9<sup>th</sup> Circuit in many ways.

- Washington, Oregon, and California share a contiguous coastline, and therefore share, and sometimes compete or conflict, on issues relating to coastal fish and wildlife, commercial ports, and maritime law.
- These three states plus Alaska, Hawaii, and the territories share the Pacific Ocean, and thus many of the same concerns.
- Washington, Oregon, Idaho, and Montana share the Columbia-Snake River basin, the backbone of the Northwest, with its salmon, hydroelectric dams, barges, and water for irrigation and recreation. Our electric system, including the federal Bonneville Power Administration, is part of an electric power grid that quite literally binds the entire West together.
- Washington, Idaho, Montana and Alaska share borders with Canada. Along with California, which borders Mexico, we all share concerns about immigration law and commerce along our international borders.

My point is: If we were to split the 9<sup>th</sup> Circuit, we could cut the cake in many ways. But why cut the cake? Given the ties among the states, the 9<sup>th</sup> Circuit is a case where the whole is greater than the sum of its parts could ever be.

Arguments that the 9<sup>th</sup> Circuit does not function well are not compelling. I am convinced by the ample rebuttal to those arguments – made by people intimately familiar with the courts – that the administrative problems can be remedied without dividing the circuit.

I am here to testify about concerns on a different level. Washington and the Northwest are closely tied to California and the other western states.

Washington is home to some major corporations whose products, I'm willing to bet, we have all used and enjoyed recently.

- How many here have flown on a Boeing airplane in the last month?
- Sipped a Starbucks latte?
- Shopped for clothes at Nordstrom store?
- Stayed in a house or hotel built with Weyerhaeuser lumber (-- though you might not have recognized it)?
- Used Microsoft software?

We are proud of these businesses but we recognize that they are part of a national and world economy. As you know, if California were a country, it would be the 9<sup>th</sup> largest country in the world, as measured by gross national product.

Those who see California as a liability have too narrow a field of vision. California is an integral part of the western and Pacific states and an important economic partner – all the more reasons for uniformity in the case law between Washington and California.

It would not benefit Washington to see California become part of another circuit, with the conflicting case opinions and forum shopping separate circuits would produce. I am thinking of cases relating to immigration law, labor law, the Endangered Species Act, the Bonneville Power Administration, maritime law, and tribal treaty law. The western states are not severable – they are tied together by geographic, natural resource, economic, and legal issues distinctive to the west.

It is a virtue, not a vice, that the 9<sup>th</sup> Circuit is able to bring consistency and coherence in all these areas of law, as they apply to all of the states and territories in the circuit. If the circuit were divided, there would be unnecessary friction, forum-shopping, competitive advantages and disadvantages among states in different circuits. There would be conflicts in the laws that apply to fish that know no boundaries, commerce that is traded up and down the coast, and people who work, play, and emigrate throughout the West and Pacific.

It is a virtue, not a vice, that the 9<sup>th</sup> Circuit judicial panels are drawn from a large and geographically diverse pool of judges, ensuring a broad, not parochial, approach to how federal law is applied within the region.

I think these virtues will become even more evident in the future, especially as the U.S. Supreme Court finds it increasingly difficult to review and resolve all of the conflicting cases from different circuits.

The 21<sup>st</sup> century will tie all of us closer in many ways: Technology will increase our communication; multiple demands for limited natural resources will force us to allocate them wisely; commerce will become seamless across international borders.

We should be guided not by short-term political concerns, but by a long-term look at the future. In that regard, we are well-served by the unified, integrated, well-run 9<sup>th</sup> circuit that we have.

Thank you, and thank you for coming the Washington state, to listen to our views.