



LITIGATION SECTION
THE STATE BAR OF CALIFORNIA

April 20, 2004

VIA U.S. MAIL & U.S. MAIL

The Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, DC 20510

Re: Ninth Circuit Court of Appeals Judgeship and Reorganization Act of 2004 (S. 2278) -- OPPOSE

Dear Senator Feinstein:

The Executive Committee of the Litigation Section of the State Bar of California on behalf of the Litigation Section opposes S. 2278, the latest in a series of proposals to split the Ninth Circuit. We also oppose two other pending proposals to split the circuit, S. 562 and H.R.2723. There is no sound reason to split the Ninth Circuit, and certainly no reason to incur the very substantial costs that such a split would generate.

This position is only that of the Executive Committee of the Litigation Section of the State Bar of California. This position has not been adopted by the State Bar's Board of Governors, its overall membership, or the overall membership of the Litigation Section, and is not to be construed as representing the position of the State Bar of California. Membership in the Litigation Section and its Executive Committee is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.

Founded in 1983, the Litigation Section of the State Bar of California has about 9,000 members and is one of the largest of the State Bar of California Sections. The mission of the Litigation Section is to promote excellence and civility in litigation and alternative dispute resolution. The Litigation Section gives effect to its mission by (a) furthering the knowledge of Section members in all aspects of litigation, whether before judicial, quasi-judicial, or administrative tribunals, and in aspects of alternative dispute resolution; (b) assisting in the formulation, administration and implementation of programs, forums and other activities for the education of members of the State Bar in the area of litigation; and (c) assisting with the formulation, administration and implementation of regulations and legislation which impact the quality of justice.

The proposed split of the Ninth Circuit has a direct, substantial and negative effect on the quality and cost of justice. Thus, we write this letter.

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As both Chief Judge Mary M. Schroeder and Senior Judge Clifford Wallace testified on April 7, 2004, splitting the Ninth Circuit lacks the support of a consensus of the judges and lawyers in the Ninth Circuit. Moreover, the proposed division serves no legitimate interest and will, in fact, hamper the effective and consistent administration of justice in the western United States.

Dividing the Ninth Circuit would do away with the important advantages that flow from a large circuit. The Ninth Circuit currently enjoys significant economies of scale in its administrative and managerial functions. A divided circuit would have to duplicate many of those functions: splitting the Ninth Circuit in two, as proposed by S. 562 and H.R. 2723, would cost an estimated \$100 million, plus \$10 million per year in added administrative costs. The three-way split proposed by S. 2278 would further increase administrative costs. At a time when our federal government is facing significant deficits, our efforts should be directed at lowering costs, not increasing them—particularly where, as here, the increased costs will do nothing to improve the administration of justice in the circuit.

As the nation's largest federal circuit, the Ninth Circuit has consistently been at the forefront of technological and administrative innovation. As caseloads grow in all of the nation's Courts of Appeals, efficient administration will become ever more essential. As Senior Judge Wallace pointed out in his testimony last week, simply splitting a large circuit confers no such benefit; that path will lead only to fragmented federal law and increased inter-circuit conflicts. Even in the face of an increasing workload, the Ninth Circuit has been delivering coherent, consistent circuit law. An undivided Ninth Circuit will continue to serve as a model of effective administration of a large appellate court for the rest of the country.

The Ninth Circuit has been consistently and effectively serving the western United States for over 110 years. Dividing this venerable institution will yield no benefits, and will squander the significant economies of scale that the circuit currently enjoys. We urge you and your colleagues to reject S. 2278, as well as any other proposals to split the Ninth Circuit.

Very truly yours,



Charles V. Berwanger

CVB:bg

cc: The Honorable Orrin G. Hatch
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