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March 3, 2005

The Honorable F. James Sensenbrenner Jr.
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Re: *Proposals to Split the Ninth Circuit Court of Appeals; H.R. 211 and 212*

Dear Chairman Sensenbrenner, Chairman Smith, Ranking Members Coyers and Berman:

I am writing on behalf of the Orange County Bar Association, of which I am President, to register our organization's opposition to both H.R. 211 and 212, which are the latest proposals to divide the Ninth Circuit. There are no legitimate reasons to divide the court and, given the towering budget deficits our country is experiencing, in the absence of the most compelling reasons it would be unwise to incur the very substantial costs necessary to effect the circuit split.

Founded over 100 years ago, the Orange County Bar Association has over 9,400 members, making it the second largest voluntary bar association in California and the eighth largest in the country. The Orange County Bar Association Board of Directors is made up of practitioners from large and small firms as well as government attorneys, with varied civil and criminal practices, and of differing ethnic backgrounds and political leanings. Our board opposes any split of the Ninth Circuit.

We understand that much has been written on this topic since proposals to split the Ninth Circuit have been recurring for at least a decade. In fact, in a letter to Senator Feinstein dated May 12, 2004, this organization registered its opposition last year to the then-pending proposals. We see no reason to change our position now. While the proponents trumpet efficiency they claim that a circuit split would accomplish and argue that the circuit as presently constituted is unwieldy, proposals to split the

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Ninth Circuit have at their core the proponents' disagreement with certain decisions rendered by the court. Rather than repeat all the arguments against splitting the circuit, we want to highlight just a few reasons for the Orange County Bar Association's opposition:

- *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." Yet proponents of the split frequently invoke the circuit's decisions as a reason for the split.

- *The Ninth Circuit is doing well.* By any statistical measure, the court is doing a good job. Based upon the absolute number of dispositions, ratio of dispositions to judges, and time from filing (or completion of briefing) to disposition, it is one of the more successful circuits. And the circuit is well-known for adopting innovative procedures to increase its efficiency.

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

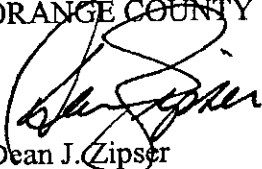
- *Creating a new circuit would be expensive.* Splitting the Ninth Circuit would cause tremendous cost increases because it would require duplicating staff, facilities, and programs, estimated to exceed \$100 million at the beginning and \$10 million per year after that. Moreover, there is a built-in inefficiency for lawyers who must master different rules, procedures, and predilections of different courts—costs that ultimately get passed along to the clients.

- *A majority of judges and practicing lawyers oppose any split.* Last year Chief Judge Mary Schroeder and former Chief Judge—now Senior Judge—Clifford Wallace testified that there is no consensus among the court's judges that splitting the circuit would be appropriate. Never before has a circuit been divided against the wishes of its judges. For example, when the Fifth Circuit was divided 25 years ago, the judges of the court overwhelmingly, if not unanimously, recommended the split. Moreover, it is our understanding that the bar of the Ninth Circuit generally, as evidenced by letters from various bar organizations, opposes the split. This is not because opponents of a split have any counter political agenda, but instead it is for the reasons set out above.

Thank you for considering our comments.

Sincerely,

ORANGE COUNTY BAR ASSOCIATION



Dean J. Zipser
President

DZ:nm

c: Barbara Boxer, U.S. Senator
Diane Feinstein, U.S. Senator
Christopher Cox, U.S. Representative
Dana Rohrabacher, U.S. Representative