

MARY M. SCHROEDER
CHIEF JUDGE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT



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May 5, 2004

Honorable Jeff Sessions
Senate Judiciary Committee
United States Senate
Washington D.C. 20510

Honorable Dianne Feinstein
Senate Judiciary Committee
United States Senate
Washington D.C. 20510

Dear Senators Sessions and Feinstein:

I write to supplement the record of the April 7, 2004 hearing before the Senate Judiciary Subcommittee on Administrative Oversight and the Courts on proposals to split the Ninth Circuit.

Following the hearing, our court held a retreat and had a full discussion on the issue of whether or not a split of the Ninth Circuit would improve the administration of justice within the circuit. It is our court's practice not to conduct votes at these retreats. Rather, I circulated a mail ballot the following week and asked each member of our court to indicate whether they: (1) oppose a division of the Ninth Circuit; or (2) favor a division of the Ninth Circuit; or (3) abstain from voting.

The Court currently has a total of 47 judges serving on the court, 26 active judges and 21 senior judges, plus two vacancies. The vote concluded on April 30, 2004. Of the 47 judges, 30 judges voted in opposition to circuit division, nine voted in favor of circuit division and eight judges abstained from voting. Of the 26 active judges, only four active judges favor division, fifteen active judges oppose division, and six active judges abstained from voting. Of the 21 senior judges, fifteen senior judges oppose circuit division, five senior judges favor division, and two senior judges abstained.

The issue before your subcommittee is how best to administer justice in the region covered by the Ninth Circuit and whether any of the proposed bills achieves that purpose. I submit they do not. Dividing a circuit should not take place to make the lives of judges or lawyers easier or cozier, or to reduce travel

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burdens. It should only take place when there is demonstrated proof that a circuit is not operating effectively, and there is a consensus among the bench and bar and the public it serves that division is the appropriate remedy.

The overwhelming vote of the judges of our circuit court of appeals, 30 to 9, against division of the circuit is a strong indication that the best way to serve the nine western states is to continue operating as a unified circuit - without any division. Over the years, the great majority of the bench and bar in the Ninth Circuit have supported this view, and that support continues to the present day.

Thank you.

Sincerely,


Mary M. Schroeder
Chief Judge

c: Senator Orrin Hatch, Chair, Senate Judiciary Committee
Senator Patrick Leahy, Ranking Member, Senate Judiciary Committee