



GOVERNOR ARNOLD SCHWARZENEGGER

April 30, 2004

The Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

Re: Possible Division of the Ninth Circuit

Dear Senator Feinstein,

Thank you for your letter of April 14, 2004, soliciting my views on current pending measures that would split the Court of Appeals for the Ninth Circuit. I am writing to express my concerns over legislation that would seek divide the Ninth Circuit.

There are two principal reasons why I am opposed to any effort to break up the Circuit.

First, there is no compelling reason to make any change in the Circuit's composition. While the Circuit has the largest number of judges of any, the ratio of opinions published per judge is within the range experienced in other circuits. While some critics believe the Circuit is so large that decisions of the Circuit conflict with one another, our experience is that the Court uses its *en banc* process to effectively resolve any such conflicts.

Second, each of the proposals currently presented for consideration may present new and different problems than those now thought to exist. None would present any balanced division of the current Court's caseload. For example, the House Resolution would place 82% of the Court's current caseload within the newly constituted Ninth Circuit. Creating a new circuit would also create the need to duplicate staff, programs and facilities, including building an enormously expensive new courthouse, in order to accommodate a new circuit with 18% of the caseload of the existing Ninth Circuit (assuming Arizona does not join the Twelfth Circuit). Hopes of reducing this completely unnecessary new expense by *ad hoc* cooperation between the chief judges of the newly constituted circuits are, as Chief Judge Schroeder has said, "illusory."

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The judges of the Ninth Circuit Court of Appeals, and the bench and bar of the Ninth Circuit generally, as well as the California Academy of Appellate lawyers, and the California delegation to the House of Representatives, have opposed past attempts to split the circuit that were "justified" on grounds no more persuasive than those offered in support of the three current bills. Indeed claims that its size makes the Ninth Circuit bench "non-collegial" have been denied by the judges themselves.

The ultimate question presented to Congress in these bills is whether justice will be better administered under a new regime than it is by the current Ninth Circuit. I do not believe that, at this time, there is a compelling reason to divide the Circuit.

Thank you for your attention to this matter.

Sincerely,



Arnold Schwarzenegger