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August 10, 2017

The Honorable Dianne Feinstein
U.S. Senate
One Post Street, Suite 2450
San Francisco, CA 94104

Re: Proposals to Split the Ninth Circuit Court of Appeals

Dear Senator Feinstein:

I write on behalf of The Northern District of California Chapter of the Federal Bar Association to reiterate our Chapter's steadfast opposition to the pending proposals to split the Ninth Circuit Court of Appeals. As you know, Members of the Federal Bar Association practice before all federal courts, including the Northern District of California and Ninth Circuit Court of Appeals. This letter expresses the position only of our Chapter, and not that of the Federal Bar Association itself (although the Federal Bar Association has also expressly opposed reconfiguration of the Circuit). Below, I enumerate four principal reasons why splitting the Circuit would be woefully misguided.

First, the assertion that the Circuit is too big to work effectively is baseless; size alone does not warrant splitting the Circuit. Through the managerial efforts of Chief Judge Sidney Thomas and the Circuit's exceptionally able administrative staff, the Circuit currently works both efficiently and effectively. We have seen no empirical data to suggest that the Ninth Circuit operates any less efficiently or any slower than its sister Circuit Courts.

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Second, splitting the Circuit will place an unreasonable financial burden on an overloaded justice system. The costs of the split will be substantial at a time when crippling cutbacks are already impairing the work of all federal courts in the country. In the event of a Circuit split, huge outlays would be required for new and/or substantially renovated courthouses. Staff, programs, and facilities would have to be duplicated, resulting in waste.

Third, a Circuit split would endanger the uniformity of law throughout the Western United States. There are significant advantages to the Circuit in its current configuration. The Circuit provides a single body of law for the Pacific Rim economic area, consistently and uniformly that would be lost if the Circuit were split. Companies that conduct business or are regularly involved in litigation throughout the Pacific Rim, including Asia, will see increased expenses as their legal teams will be forced to deal with potential inter-circuit conflicts over the interpretation of federal laws. In particular, separation of California from Nevada and Arizona – adjoining states with which it has strong business ties – may also create misguided incentives to forum shop. If the Circuit is divided, we will also lose the current administrative advantage of being able to move judges from one district to another in response to changing caseloads, without requiring the judges to become familiar with the laws of a different circuit.

Fourth, the vast majority of Ninth Circuit judges oppose the pending legislative proposals dividing the Circuit, including S. 276, S. 295, H.R. 196, H.R. 250, and H.R. 1598. According to Chief Judge Thomas, “division of the Ninth Circuit would be costly, inefficient, and would harm the administration of justice in the West.” See Judge Thomas’ July 27, 2017 letter.

The White Commission's recommendation against splitting the Ninth Circuit nearly twenty years ago remains relevant today: "There is no persuasive evidence that the Ninth Circuit (or any other circuit for that matter) is not working effectively, or that creating new circuits will improve the administration of justice in any circuit or overall." For this reason and those stated above, we respectfully urge you and your colleagues to oppose the proposed legislation to split the Ninth Circuit.

Sincerely,

A handwritten signature in black ink that reads "Peter R. Boutin". The signature is written in a cursive, flowing style.

Peter R. Boutin
President
FBA – Northern District of California Chapter