



**Supreme Court – THE JUDICIARY • STATE OF HAWAII**

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**Mark E. Recktenwald**  
CHIEF JUSTICE

**Paula A. Nakayama**  
**Sabrina S. McKenna**  
**Richard W. Pollack**  
**Michael D. Wilson**  
ASSOCIATE JUSTICES

August 7, 2017

The Honorable Charles E. Grassley  
Chairman  
Senate Judiciary Committee  
135 Hart Senate Office Building  
Washington, DC 20510

The Honorable Dianne Feinstein  
Ranking Member  
Senate Judiciary Committee  
331 Hart Senate Office Building  
Washington, DC 20510

The Honorable Brian Schatz  
722 Hart Senate Office Building  
Washington, DC 20510

The Honorable Mazie Hirono  
730 Hart Senate Office Building  
Washington, DC 20510

Dear Senators:

We, the undersigned justices of the Hawai'i Supreme Court, write to express our concern with the current legislative proposals to split the United States Court of Appeals for the Ninth Circuit (Ninth Circuit).

We have considered Chief Judge Sidney R. Thomas's March 16, 2017 written testimony before the United States House of Representatives Committee on the Judiciary, Subcommittee on the Courts, Intellectual Property, and the Internet. We agree with Chief Judge Thomas that a split would not be in the public interest and would undermine the administration of justice.

In addition to the reasons stated by Chief Judge Thomas, we believe that a split would not be in the interest of the administration of justice in Hawai'i. The Ninth Circuit's administrative capacity allows it to develop and sustain programs that significantly improve access to justice for communities. For example, the Ninth Circuit's Pro Bono Program is a national model for increasing the likelihood of litigants securing legal representation in appellate courts. The Ninth Circuit generously shared information and expertise about their program with us, which assisted us in developing our own program in our state courts.

The Ninth Circuit has also been an effective partner in supporting the legal community in Hawai'i. Among other examples, the Ninth Circuit has engaged law students by holding oral argument at the University of Hawai'i William S. Richardson School of Law, and has held educational programs with the Hawai'i Bar. Additionally, the District Court in Hawai'i recently launched a trial practice training program

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that provides an important opportunity for newer lawyers to develop their trial skills.

All of these programs reflect an efficiently run, innovative institution that is responsive to the needs of the communities it serves. Our other interactions with the Ninth Circuit--on matters such as certified questions of law, or referrals of pending cases to the bankruptcy court--have confirmed that impression.

In sum, we are concerned about the effect of fundamentally restructuring an institution that is working well in its current form. Accordingly, we respectfully express our opposition to the current legislative proposals to split the United States Court of Appeals for the Ninth Circuit.

Sincerely,



Mark E. Recktenwald  
Chief Justice




Paula A. Nakayama  
Associate Justice



Sabrina S. McKenna  
Associate Justice



Richard W. Poilack  
Associate Justice



Michael D. Wilson  
Associate Justice