

August 18, 2017

Oregon State Bar

The Honorable Charles E. Grassley  
Chairman  
Judiciary Committee  
United States Senate  
Washington, DC 20515

The Honorable Dianne Feinstein  
Ranking Member  
Judiciary Committee  
United States Senate  
Washington, DC 20515

The Honorable Jeff Flake  
Chairman  
Subcommittee on Privacy,  
Technology, and the Law  
Judiciary Committee  
United States Senate  
Washington, DC 20515

The Honorable Al Franken  
Ranking Member  
Subcommittee on Privacy,  
Technology, and the Law  
Judiciary Committee  
United States Senate  
Washington, DC 20515

Re: Proposal to Restructure the United States Court of Appeals for the Ninth Circuit

Dear Senators Grassley, Feinstein, Flake, and Franken:

The Oregon State Bar appreciates the opportunity to provide comment on the ongoing discussion regarding a proposed split of the Ninth Circuit Court of Appeals. Since the creation of the federal court system, a cornerstone of American democracy is the rule of law which is embodied by the federal court system, including the Ninth Circuit. One of the bar's primary commitments is to support the efficient and effective operations of our court system in order to ensure that all Oregonians have access to a justice system that dispenses justice fairly and without delay. We have closely monitored similar discussions about splitting the Ninth Circuit for the last two decades, and appreciate the sincere concerns that have given rise to many of these proposals.

At this time, the Oregon State Bar has concerns about the various proposals to split the Ninth Circuit Court of Appeals that are currently under consideration. First, any proposal to split the circuit should be carefully and thoroughly vetted by all stakeholders. Further, while we recognize that the Ninth Circuit carries a significantly larger workload than some of the smaller circuits, this fact has not undermined the court's ability to serve the needs of the people in the circuit. While it is possible that the populations of the states that make up the Ninth Circuit caseload may grow too large for one circuit to manage in the future, there is little evidence that we have reached that point. Efficiencies implemented in recent years as well as the increased use of technology have made it possible for each circuit to handle a larger workload than would otherwise have been possible.

Consistent with the Oregon State Bar's role in promoting access to justice within Oregon, we have concerns about the uncertainty that could be created for Oregon litigants if the state was moved into another circuit. In order to avoid uncertainty, any proposal must adequately address the precedential value of case law and opinions. Otherwise, issues that are currently settled law in Oregon could be thrown open to re-litigation thereby increasing costs and complicating access to the courts for many Oregonians. At the same time, there is no certainty that a smaller circuit would have the ability to resolve disputes faster than the current division, as case wait times are primarily driven by other factors. These factors include funding and staffing decisions that can have an adverse impact on the ability of our courts to fulfill their mission. The bar strongly supports full funding and full staffing of the federal courts because they are crucial to ensure the functioning of our American justice system.

The Oregon State Bar and its members thank you for your leadership and commitment to our federal court system, its judiciary, and the administration of justice. Please let us know if we may be of assistance on this or any other matter.

Sincerely,

Handwritten signature of Michael D. Levelle in blue ink.

Michael D. Levelle  
President  
Oregon State Bar

Handwritten signature of Kathleen J. Rastetter in blue ink.

Kathleen J. Rastetter  
Chair, Public Affairs Committee  
Oregon State Bar