A Sample of Prominent Conservative Opposition to Efforts to Split the Ninth circuit (September 18, 2006)

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Opposition to splitting the Ninth Circuit is widespread and bipartisan. Below are excerpts from prominent conservatives explaining the basis for their opposition. To see a comprehensive list of opponents, see: http://www.judgingtheenvironment.org/assets/pdf/Opponents-of-Ninth-Circuit-Split-8-4-06.pdf

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I. REPUBLICAN ELECTED OFFICIALS:

Governor Arnold Schwarzenegger, *Governor of the State of California (R):*
"There are two principal reasons why I am opposed to any effort to break up the Ninth Circuit. First, there is no compelling reason to make any changes in the Circuit's composition…Second, each of the proposals currently presented for consideration present new and different problems than those now thought to exist. None would present any balanced division of this Court's current caseload…Creating a new circuit would also create the need to duplicate staff programs and facilities…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.…The ultimate question presented to Congress in these bills in whether justice will be better administered under a new regime than it is by the current Ninth Circuit. I do not believe that…there is a compelling reason to divide the Circuit."—Letter From Governor Arnold Schwarzenegger to Diane Feinstein, April 30, 2004. [Full Text]

Pete Wilson, *former Senator and Governor of California (R):*
"…this is exactly what is being proposed…environmental gerrymandering…Beyond the weakness of the arguments being used to support the pending bill, its passage would actually harm the federal interest in uniformity in the application of federal laws. We should have uniform application of the laws on endangered species, on forest management, on maritime oil spills, on clean air, and on clean water." – Statement before the Senate Committee on the Judiciary, March 6, 1990. [Full Text]

II. JUDGES APPOINTED BY REPUBLICAN ADMINISTRATIONS:

Ninth Circuit Court:
Senior Judge Alfred T. Goodwin (*Appointed by President Nixon, 11/30/71*)**; Senior Judge J. Clifford Wallace** *(Appointed by President Nixon, 07/14/72)***; Senior Judge W, Melvin Brunetti** *(Appointed by President Reagan 04/04/85)***; Active Judge Alex Kozinski** *(Appointed by*

*President Reagan 11/07/85)***; Senior Judge John T. Noonan** *(Appointed by President Reagan, 12/17/85)***; Jr., Senior Judge David R. Thompson** *(Appointed by President Reagan 12/17/85)***, Active Judge Richard R. Clifton** *(Appointed by President Bush 07/30/02)***, Active Judge Consuelo M. Callahan** *(Appointed by President Bush 05/28/03)* **and Active Judge Carlos T. Bea** *(Appointed by President Bush 10/01/03)***:**

> "In sum, we believe the case for splitting the circuit has not been made. Yes, we are big and our territory is wide, but we have shown that we can function effectively and efficiently despite—indeed because of—our size. Large organizations, whether they be corporations or courts, profit from economies of scale. We have made size our friend, rather than our enemy; other courts of appeals will have no choice but to follow suit, because in one generation, two at the most, they will be where we are today. Which is why the overwhelming number of judges on the Ninth Circuit, and the lawyers who practice before us—the people who know most about the court's operation—strongly oppose the split. The time has come to put this bad idea behind us and get on with the business of administering justice." --Co-authored by 33-Ninth Circuit Judges, including the above, in: *Federalism and Separation of Powers: A Court United: A Statement of a Number of Ninth circuit Judges*, Engage, Vol. 7, Issue 1, (March 2006). [Full Text]

Former Ninth Circuit Judge Charles Wiggins:

"The Ninth Circuit operates well with its present structure and boundaries. The drive to split the circuit is animated by political concerns, not by a desire to improve the federal appellate courts. Therefore, I oppose the White Commission's restructuring of the circuit as well as any other plan that would divide the circuit….The argument that the circuit is just "too big" collapses under scrutiny. As the White Commission made clear, there is no reason to believe that the circuit is too large to administer justice fairly and effectively. In addition, modern technology has shrunk the circuit. Modern jets cover large distances in minutes or hours. We also can communicate instantaneously across vast distances, rendering face-to-face meetings less important. Finally, splitting the circuit would do little to ease the travel burden that remains…One of the prime factors motivating proponents of a split is provincialism --the belief that judges from a state should decide cases that originate in that state. Provincialism is inconsistent with the purpose of the federal court system, which strives to interpret and apply national law uniformly. Federal law should not mutate to satisfy local constituents; federal law is the same nationwide…Political philosophy is another factor motivating proponents of a split. This is an illegitimate motive. Tampering with the federal courts because of the political or judicial philosophies of particular judges is inconsistent with the separation of powers doctrine and the independence of the judiciary."-- On Review of the Report by the Commission on Structural Alternatives For the Federal Courts of Appeals, Hearing Before the H. S'Comm. On Courts and Intellectual Property Of (July 22, 1999) (testimony of Senior Judge Charles Wiggins) (Note Judge Wiggins also served for 12 years in the House of Representatives, and as the ranking Republican member on the Courts and Intellectual Property subcommittee).

U.S. District Courts:

Former Chief Judge Marilyn Huff, U.S. District Court for the Southern District of California *(Appointed by President George Bush 3/12/91)* **and Chief Judge Irma Gonzalez,** U.S. District Court for the Southern District of California *(Appointed by President Bush 4/9/92)*:

"Together, we oppose legislation to split the Ninth Circuit as the split would reduce available resources for the district courts in California, further splinter enforcement of our borders, reduce administrative sharing, and waste taxpayer funds to duplicate the buildings and staff necessary to administer another circuit… The size of the Circuit does not warrant a split. Instead, the size of the Circuit is one of its many strengths. The size allows a wide and diverse range of views for improvement in the administration of justice…. The Ninth Circuit already has in place the infrastructure needed to support the court... a split would require the duplication of buildings and staff at a time that precious resources should be directed where they are needed, not wasted on a Circuit split. In sum, we oppose the split of the Ninth Circuit." --Improving the Administration of Justice: A Proposal to Split the Ninth Circuit, Hearing before the Sen. S. Comm on Administrative Oversight and the Courts (April 7, 2004) (Testimony of Former Chief Judge Marilyn Huff**,** U.S. District Court for the Southern District of California). [Full Text]

Chief Judge John Coughenour, U.S. District Court for the Western District of Washington, and chair of the Ninth Circuit's Conference of Chief District Judges (Appointed by President Reagan 8/11/81):

"I come before you today to state my strong opposition to splitting the Ninth Circuit, whether through this particular bill or others previously proposed. I believe the Ninth Circuit is functioning exceedingly well and that splitting it will not improve and may actually deter from the efficient administration of our federal courts. Many of my fellow judges, particularly chief district judges who have administrative responsibilities, share this view. In fact, in my seven years as chief district judge, I have yet to have a conversation with a fellow chief district judge who spoke in favor of a split…Even though we have more judges, more cases, the largest geographic area, and the most people, we have a collegiality that I don't believe exists anywhere else in the federal judiciary."-- Improving the Administration of Justice: A Proposal to Split the Ninth Circuit, Hearing before the Sen. S. Comm on Administrative Oversight and the Courts (April 7, 2004) (Testimony of Chief Judge John Coughenour, U.S. District Court for the Western District of Washington). [Full Text]

III. PROMINENT PRACTIONERS

Professors John C. Yoo and Eric M. George *(John C. Yoo is a law professor at UC Berkeley and formerly a Justice Department attorney in the George W. Bush administration. Eric M. George is a trial lawyer in Southern California and former legal counsel to the U.S. Senate Judiciary Committee and to Gov. Pete Wilson):*

"First, dividing the court isn't necessary, at least not yet. [The Ninth Circuit] also has more judges than any other circuit in the country and appears to face no problem of a quality or

magnitude any different than those faced by any other court…Second, the split would lead the administration of justice in the western United States into even worse problems… [[the split would] add a brand new circuit headquarters, a new judicial bureaucracy and new and significant administrative costs, at a time when our federal government must tighten its belt to pay for two wars and the reconstruction of New Orleans. A split would abort innovations in administration that may point the way in the future toward keeping the basic outlines of a small federal judiciary while accommodating growing caseloads, such as a staff attorney's office that recommends dispositions for the large number of routine appeals, a special panel to resolve bankruptcy appeals and a mediation program that resolves more than 1,000 cases a year…Third, a split is improperly motivated. Many critics of the Ninth Circuit oppose what they see as excessively liberal decisions of federal judges located in California, and urge a split in order to quarantine such rulings in the Golden State. We think that it would be a mistake to begin drawing up the jurisdiction of the federal courts in an effort to shape ideological outcomes of their decisions. And what of California? Any effort by Republicans in Congress to limit to California the effect of so-called liberal Ninth Circuit decisions reflects nothing more than short-term thinking. Republicans cannot build a permanent majority without figuring out how to bring California, with its steadily growing population, into the fold. Trying to employ judicial barriers to isolate a circuit's jurisprudence will deter the Republican Party from benefiting from California's dynamism and political forward-thinking."— *John C. Yoo and Eric M. George, San Francisco Chronicle*, "Splitting the U.S. Court of Appeals for the Ninth Circuit: A flawed plan to isolate California" (November 23, 2005). [Full Text]

Manus Cooney (*Republican Lawyer and Lobbyist, and Former Chief Counsel to the Senate Judiciary Committee*):

"The notion that splitting the Ninth is somehow going to take care of judicial activism is not borne out by the facts. The reality is you are going to have a much more liberal Ninth and a more moderate court in the 12th. ... For those who have problems with the Ninth and who have wanted to deal a blow to judicial activism, you don't deal a blow to judicial activism by establishing a court that is more liberal than the existing Ninth Circuit." –Quoted in, Chronicle Washington Bureau, Zachary Coile, "House Budget Sleeper Splits the Ninth Circuit" (November 30, 2005). [Full Text]