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Federal Courts

Environmental Groups Oppose Proposal To Split Ninth Circuit Court of Appeals

More than 100 environmental groups and other public interest organizations urged senators Aug. 3 to oppose legislation that would divide the U.S. Court of Appeals for the Ninth Circuit, saying a split would lead to inconsistent legal rulings affecting the Western states as well as areas of the Pacific Ocean.

"By dividing and conquering the Ninth Circuit, polluters and other special interests hope to change the pool of judges who will decide their cases," the groups said in a letter signed by EarthJustice, Defenders of Wildlife, National Audubon Society, and Natural Resources Defense Council, among others.

The groups said breaking up the nation's largest federal appeals court would "fracture" the management of natural resources in states now covered by the Ninth Circuit, which include Alaska, Arizona, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, and California, as well as the Pacific Islands.

The groups noted that a majority of current judges on the circuit court, as well as numerous elected officials from states in the Ninth Circuit, oppose plans to split the circuit.

While supporters of the legislation are now stressing administrative efficiency as the reason to break up the circuit, their true motivation is based on ideology, with the goal of obtaining more conservative rulings through "environmental gerrymandering," said Glenn Sugameli, senior legislative counsel for EarthJustice.

Senate Panel Postpones Action

The letter comes as the Senate Judiciary Committee postponed an Aug. 3 markup of a bill (S. 1845) sponsored by Sen. John Ensign (R-Nevada) that would split the circuit by creating a new Twelfth Circuit comprising Alaska, Arizona, Idaho, Montana, Nevada, Oregon, and Washington. The measure would leave California, Hawaii, and the Pacific Islands in the Ninth Circuit.

Judiciary Committee Chairman Arlen Specter (R-Pa.) has said he will hold off marking up the bill in order to accommodate a request by Sen. Dianne Feinstein (D-Calif.), who also sits on the committee, for a full committee hearing (125 DER A-1, 06/29/06 (Embedded image moved to file: pic04833.gif) a0b2y5z7r5). A committee spokesman said the hearing will likely be held after the Senate returns from its August recess.

Feinstein, who opposes the measure, asked for a full committee hearing on the bill because the only committee action on the issue so far has been in the Judiciary Subcommittee on Administrative Oversight and the Courts. The subcommittee heard testimony from judges on the Ninth Circuit in October 2005. However, the judges' comments did not address the specific provisions of S. 1845.

Breaking up the Ninth Circuit has been a goal of conservatives and lawmakers from smaller Western states who say the court is dominated by liberal California judges and point to its high rate of reversal in the U.S. Supreme Court.

A companion House bill (H.R. 4093), sponsored by Judiciary Committee Chairman F. James Sensenbrenner Jr. (R-Wis.), was reported out of the Judiciary Committee in October 2005 but has yet to reach the House floor.

At the Senate Judiciary subcommittee hearing in October, the circuit's chief judge, Mary M. Schroeder, said only three of the 24 active judges on the Ninth Circuit favor splitting the circuit.

The U.S. Judicial Conference, the federal judiciary's chief policymaking body, took a neutral stand on the issue at its meeting in September 2005. The group emphasized that if Congress decides to split the circuit, it should ensure that there are enough judgeships for the newly created circuit. The Senate bill would create five new judgeships for the new Twelfth Circuit. (Embedded image moved to file: pic31115.gif)
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By Ralph Lindeman