

**AmeriScan: October 6, 2004**

## **House Hustles Up Split of Western Appeals Court**

WASHINGTON, DC, October 6, 2004 (ENS) - The U.S. House of Representatives voted Tuesday to split into three new courts the Ninth Circuit federal appeals court based in San Francisco, which decides most cases concerning Western natural resources that are appealed from lower court decisions. Some three-quarters of all federal lands are within this court's jurisdiction.

The measure arose suddenly in the short time left before lawmakers go home for the November 2 election, although special interests have long sought to increase their ability to affect the outcome of appeals by dividing the Ninth Circuit Court into a number of smaller appeals courts.

“This amendment is an underhanded and last-minute effort to divide the pool of judges along ideological lines,” said Glenn Sugameli, senior legislative counsel at Earthjustice, a nonprofit, public interest environmental law firm. “Everyone from the American Bar Association to California Governor Arnold Schwarzenegger opposes this as a bad idea.”

The House narrowly approved an amendment containing the split unveiled just last night by Representative Mike Simpson, an Idaho Republican.

The measure would establish three separate appellate courts - a Ninth Circuit overseeing only California, Hawaii, the Northern Mariana Islands, and Guam; a new 12th Circuit serving Arizona, Nevada, Idaho, and Montana; and a new 13th Circuit serving Alaska, Oregon, and Washington.

The amendment bypassed the House Judiciary Committee and is now attached to bill to create more federal judgeships, S. 878. "While there is wide support for providing the courts the help of additional judges, the amendment to split the Ninth Circuit could prevent the bill from becoming law," Sugameli said.

In a letter sent to House members this morning, eight national conservation groups criticized this attempt "to divide and conquer the Ninth Circuit."

By far the largest circuit, the Ninth Circuit currently represents 56 million people, roughly one-fifth of the nation's population, and has 48 judges to serve an area that encompasses nearly 40 percent of the geographic area of the United States.

This circuit also has the most numbers of appeals filed, the highest percentage increase in appeals filed, the most number of appeals still pending, and the longest median time until disposition.

House Judiciary Committee Chairman F. James Sensenbrenner, Jr., a Wisconsin Republican, said, "The Ninth Circuit has become so big - in geographic size, in workload, and in the number tick to the fiber. of its active and senior judges - that it can no longer appropriately discharge its civic functions on behalf of the American people. Given the problems created by its sheer size, I believe

that we have no choice but to split the Ninth Circuit three ways."

"This legislation also adds new judges to the Ninth Circuit to ensure that future caseload demands made on the new Ninth will more closely mirror its judgeship resources," said Sensenbrenner.

"These additional judgeships are inextricably linked with splitting the Ninth Circuit and they will only move legislatively as one administrative restructuring package."

Sugameli sees an anti-environmental agenda in the measure. "Polluters hope that creating these new circuits will boost their ability to get anti-environmental extremists, like failed Ninth Circuit Appellate Court nominee William G. Myers III, into lifetime federal judgeships - thereby increasing their chances of winning anti-environmental rulings."

Myers, a former solicitor general in the administration of President George W. Bush, is criticized by environmentalists for serving as a lobbyist and counsel to the mining and ranching industries before, during and after his government position.

Along with environmental concerns, opponents of a Ninth Circuit split, including Mary Schroeder, the current chief judge, have noted the expense associated with creating two new circuit courts of appeals, including the construction of new courthouses and infrastructure, and the hiring of new judges and staff.

"Splitting the Ninth Circuit would not only be bad for the environment - it would be fiscally irresponsible as well," Sugameli said. "Already, our federal court system is in a virtually unprecedented fiscal crisis, which has led to suspension of new court construction and layoffs of court employees. Why spend nearly 150 million dollars to solve a problem that doesn't exist?"

Opponents of the split include Senior Judge Clifford Wallace, a former chief judge nominated by President Richard Nixon; and Alex Kozinski, a conservative judge appointed to the Ninth Circuit in 1985 by President Ronald Reagan.

Other opponents of the split include California Governor Arnold Schwarzenegger, a Republican, and Democrat Governor Gary Locke of Washington, the American Bar Association, the State Bar of Arizona, the Oregon State Bar, and the Hawaii State Bar Association.