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Article

Environmentalists Ask Senate to Leave the 9th Circuit Alone

By Lawrence Hurley

WASHINGTON - Environmental activists signaled Thursday that they are quaking in their boots at the prospect of the 9th U.S. Circuit Court of Appeals splitting into two.

More than 100 environmental and left-leaning advocacy groups signed a letter to the Senate Judiciary Committee calling for lawmakers to leave the nation's largest and busiest regional appellate district intact on the grounds that pro-business interests will receive a more favorable hearing in the proposed new 12th Circuit.

The 12th Circuit would include states like Alaska, Oregon, Montana, and Idaho, all of which contain huge swaths of public land where extraction industries like mining and fishing dominate.

"We are demonstrating the broad opposition to the split," said Glenn Sugameli, senior legislative counsel for environmental group Earthjustice, who was the lead writer of the letter.

Signatories include national liberal groups like the Alliance for Justice and the Lawyers Committee for Civil Rights Under Law, in addition to more localized environmental organizations like the California Wilderness Coalition, Alaska Conservation Solutions, and the Oregon Center for Environmental Health.

The letter, addressed to senators, warns that corporate interests "have long desired to increase their ability to judge-shop by dividing the 9th Circuit Court of Appeals into a number of smaller courts of appeals."

Sugameli said in an interview that a split would give the judges in the newly formed circuit an opportunity to shatter a settled body of law on environmental issues, touching on such areas as fishing, mining and grazing rights.

He added that various natural resources, including some rivers, would be spread between the two circuits, which could lead to further inconsistencies in the law.

Lake Tahoe, for example, is divided between California and Nevada.

"It really helps to have one federal court that rules on issues affecting Lake Tahoe," Sugameli said.

But Damien Schiff, a staff attorney at the Sacramento-based Pacific Legal Foundation, took issue with the letter's premise. The foundation advocates for free enterprise and property rights and often takes the opposite side from environmentalists in major court cases.

He said there's no evidence that the proposed 12th Circuit immediately would take a more anti-environmentalist position.

"I'm somewhat skeptical of the argument that simply dividing the 9th Circuit into two would necessarily produce different jurisprudence," he said.

It would, in part, depend on which individual judges leave the 9th Circuit to join the new circuit, he added.

Of the 11 active 9th Circuit judges based in

cities that would be folded into a new 12th Circuit, eight were appointed by Democratic presidents, and three were appointed by Republicans. There are two more Republicans on the way if Bush administration nominees William G. Myers and N. Randy Smith, both of Idaho, are confirmed by the Senate.

University of Richmond law professor Carl Tobias, who has been closely following the split debate, said the environmental groups may have good reason to worry. But he said Thursday's letter contains nothing that senators wouldn't know already.

"I think it's relatively clear that [the 12th Circuit] would be more conservative on these kinds of issues," he added. "I think that almost everyone agrees about that."

Under the proposal currently before Congress, the new 9th Circuit would comprise of California, Hawaii and the Northern Mariana Islands.

The new Phoenix, Ariz.-based 12th Circuit would comprise Alaska, Arizona, Idaho, Montana, Nevada, Oregon and Washington.

Thursday's letter further highlights that the proposed split is deeply divisive within the legal community.

Two dozen federal judges, including 9th Circuit members Diarmuid O'Scannlain, Andrew J. Kleinfeld and Richard Tallman, wrote to the Judiciary Committee in July, arguing that a split makes sense for more-efficient court administration.

The committee is due to hold a hearing on the split proposal in the fall.