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GOP 'AGENDA' ON ENVIRONMENT SUITS CITED TO FIGHT 9TH CIRCUIT BILLS

Republican-led legislative efforts to split the U.S. Court of Appeals for the 9th Circuit -- which hears many environmental cases and often sides with activists -- are facing opposition from public interest groups, who allege the real agenda behind the effort is to reduce their chances of winning the environmental lawsuits they often file in that circuit.

Environmental groups, which often file lawsuits in the circuit fighting EPA rules and industry practices, also are pointing to concerns raised by leading California Republicans -- including Gov. Arnold Schwarzenegger and several key judges -- over the bills, which are getting renewed attention by lawmakers. *Relevant documents are available on InsideEPA.com.*

The 9th Circuit, which covers more states than any other federal circuit, hears a slew of environmental cases, and activists often prefer bringing lawsuits in this circuit because they frequently find success there. One of the proposed bills, H.R. 4903, would keep California, Guam, Hawaii and the Northern Mariana Islands in the 9th Circuit and would move Alaska, Arizona, Idaho, Montana, Nevada, Oregon and Washington into a new Court of Appeals for the 12th Circuit. A Senate Judiciary subcommittee held a hearing Oct. 26 over S. 1845, which is similar to the House measure.

The efforts come at the end of a congressional year that has heard an array of criticisms against an "activist"

judiciary by conservative lawmakers, who have threatened to overhaul the U.S. court system in light of their opposition to a host of judicial decisions on social issues. For instance, the 9th Circuit recently ruled that the Pledge of Allegiance is unconstitutional because of its religious references.

The plan's supporters, who have long sought to divide the 9th Circuit, say the legislation is necessary because the circuit is nearly twice as large as the next largest circuit, and needs to be split to make hearing lawsuits more efficient. "Bigger does not always mean better," House Judiciary Committee Chairman James Sensenbrenner (R-WI) said in an Oct. 20 floor speech introducing his bill, H.R. 4903. "The constant expansion of the size of a court without also adopting commensurate reforms will, most assuredly, not result in improving the performance of the judiciary."

However, the Judiciary subcommittee on courts, the Internet, and intellectual property abruptly canceled an Oct. 26 markup of the bill, and aides did not know whether it would be rescheduled.

Sensenbrenner and other supporters note that the circuit has 47 judges, nearly twice as many as the next largest circuit, and encompasses nearly 40 percent of the United States.

But critics decry the efforts to "gerrymander" the 9th Circuit by

"those who had been angered by rulings upholding and enforcing environmental laws," according to an Oct. 24 letter signed by over 80 activist groups, representing civil rights, women's rights and environmental interests.

Attorneys with Earthjustice point to statements by House Republicans as signals that suggest this is the "real" agenda behind the legislative effort. For instance, Rep. Don Young (R-AK), chairman of the House Transportation & Infrastructure Committee, said in a statement, "This is good for the state of Alaska because we will no longer be governed by adverse court decisions made for San Francisco and be governed by that way of life." Young made the statement after the House narrowly adopted a floor amendment seeking to split the circuit by Rep. Mike Simpson (R-ID) by a 205-194 vote on Oct. 5, 2004.

Also, Earthjustice is pointing to an editorial quoting Rep. Rick Renzi (R-AZ) in the *Tucson Citizen* that suggested that Renzi supported the plan because he disagreed with the 9th Circuit's decisions. "The court has shown complete disregard for our communities in rural Arizona," he said.

The activist letter, which was sent to House and Senate lawmakers, cites opposition to the plan from prominent California Republicans, including Schwarzenegger, former senator and governor Pete Wilson, Judge Clifford Wallace, who was appointed to the court by Richard Nixon, and Judge Alex Kozinski, who was nominated by Ronald Reagan. In addition, the coalition says Arizona Gov. Janet Napolitano (D), the American Bar Association, and the state bars of Arizona, Montana, Washington and Hawaii, oppose the bills.

"By 'dividing and conquering' the Ninth Circuit, polluters hope to change the pool of judges who will decide their

cases," the letter says. "The result would be less consistency in the law, resulting in more exploitation and mismanagement of natural resources in the Pacific Ocean and numerous special places in the western states."

The Senate Judiciary subcommittee on administrative oversight & the courts held an Oct. 26 hearing on S. 1845, which was introduced by Sen. John Ensign (R-NV). But observers say floor consideration will likely not occur until next year, if at all, because it is unclear whether supporters have enough votes to pass the bill.

S. 1845 follows earlier legislation, S. 1301, that would have split the 9th Circuit into three separate circuits, in what may be an effort to overcome opposition on the grounds that splitting the circuit would create inefficiencies and increase the number of appellate circuit splits on key legal issues.

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