

Statement of
The Honorable Dianne Feinstein

United States Senator
California
October 26, 2005

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Administrative Oversight and the Courts Subcommittee Hearing on the
Potential Split of the Ninth Circuit
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Let me welcome and thank each of the judges here today for taking time out their busy schedules and traveling across the country to share their insights regarding the 9th Circuit Court of Appeals.

The 9th Circuit is the largest Circuit Court of Appeals in the nation in both population and caseload. Advocates for splitting the 9th Circuit often cite the 9th Circuit's size as a basis for dividing it. However, what matters is not the size of the 9th Circuit, but whether the 9th Circuit meets its charge of providing justice to those living in the 9th Circuit. The current 9th Circuit achieves this goal.

Splitting the 9th Circuit is a lose/lose proposition. There are clear financial costs to splitting the 9th Circuit, and there are clear and dramatic costs to the administration of justice.

The uniformity of law in the West is a key advantage of the 9th Circuit, providing consistency among western states that share many common concerns. For example, splitting the Circuit could result in one interpretation of a law governing trade with Mexico in California and a different one in Arizona, or in the application of environmental regulations one way on the California side of Lake Tahoe, and another way on the Nevada side.

The efficiency of the 9th Circuit is also a significant consideration. As presently constituted, the 9th Circuit is one of the most efficient Courts of Appeals in the nation. Splitting the 9th Circuit into two or even three Courts of Appeals would require the creation of new and costly bureaucracies to administer these new courts, thereby losing the economy of scale achieved by having a single administration tending to the federal courts of the 9th Circuit.

Dividing up the 9th Circuit also would require additional federal funds for new or expanded courthouses and administrative buildings, as existing judicial facilities would be insufficient for the new Circuit or Circuits.

Yesterday, the Administrative Office of the United States Courts provided me with a letter estimating the costs for splitting the 9th Circuit under S.1845, which would split the 9th Circuit into the 9th and 12th Circuits. The Administrative Office estimates that the split would have

start-up costs of \$95,855,172 and would have \$15,914,180 in annual recurring costs. These are substantial costs, particularly considering that the judiciary budget is already stretched thin. I ask that this letter be made part of the record.

Finally, one must consider what organization of the 9th Circuit will be fair to all the states of the current 9th Circuit.

The plans to split the 9th Circuit leave the states remaining in the 9th Circuit with far, far higher caseloads per judge than those states that would move into a new 12th or 13th Circuit.

Under the current proposals, California and Hawaii would be left in the 9th Circuit, while Arizona, Nevada, Idaho, Montana, Oregon, Washington, and Alaska would move into a new Circuit or Circuits.

These proposals would create nice sinecures with low caseloads for judges in a newly created 12th or 13th Circuit, but would substantially disadvantage what would remain the largest Circuit Court in the nation.

The 'new' 9th Circuit would include 72% of the caseload of the 'old' 9th Circuit. However, even with the addition of the 5 permanent and 2 temporary judgeships proposed in the bills before the Senate, the new 9th Circuit would have only 60% of the judges in the newly created Circuits.

The caseload in the new 9th Circuit would be 536 cases per judge, as opposed to 317 cases per judge for the proposed 12th Circuit. This would leave judges in the 9th Circuit with 219 more cases per judge. This is not a fair distribution of judicial resources.

For the judges in a new 9th Circuit to have comparable caseloads to judges in a new 12th Circuit, the 9th Circuit would need an additional 14 judges, on top of the 5 permanent and 2 temporary judges created by the bills before the Committee. In total, 21 new judges would need to be added to the 9th Circuit for the split to be fair. This would entail its own problems and costs, and highlights the difficulties created by proposals to split the 9th Circuit.

Opposition to splitting the 9th Circuit comes from judges and state bars associations that would move into a proposed new Circuit, as well as those that would remain in the 9th Circuit. Only 3 of the 24 active judges on the 9th Circuit favor splitting the Circuit. The Bar Associations of Arizona, Washington, Montana, and Hawaii all have voiced their opposition to breaking up the 9th Circuit.

I ask that the letters and resolutions from these Bar Associations opposing a split be entered into the record, and I look forward to hearing from this distinguished panel.