

Statement of

The Honorable Jon Kyl

United States Senator
Arizona
April 7, 2004

U.S. SENATE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON ADMINISTRATIVE OVERSIGHT AND THE COURTS

HEARING ON "IMPROVING THE ADMINISTRATION OF JUSTICE: A PROPOSAL TO SPLIT THE NINTH CIRCUIT"

APRIL 7, 2004

STATEMENT OF SENATOR KYL:

I would first like to introduce Chief Judge Schroeder, and thank her for making herself available to testify at this hearing. Judge Schroeder received her law degree from the University of Chicago law school. After serving as a trial attorney in the U.S. Justice Department's Civil Division, and spending several years in private practice in Phoenix, Judge Schroeder was appointed to the Arizona Court of Appeals in 1975. In 1979, she was elevated by President Carter to the U.S. Court of Appeals for the Ninth Circuit. She has served as Chief Judge of the circuit since 2000. Chief Judge Schroeder brings a unique and valuable perspective to the topic of this hearing.

The subject of this hearing - whether to subdivide the Ninth Circuit - is one that I have been immersed in for many years. Prior to serving in Congress, I spent nearly two decades in private practice in Phoenix, Arizona. I represented clients before every level of the state and federal courts, and have litigated many times before the Court of Appeals for the Ninth Circuit.

As a U.S. Senator from Arizona, I supported and submitted written comments to the "White Commission" on Structural Alternatives for the Federal Courts of Appeals in 1998. Commenting on the Commission's draft report, I urged commissioners to consider and evaluate multiple proposals for reconfiguring the Ninth Circuit. The proposals that I suggested to the Commission included making California into a separate division of the Ninth Circuit or into a separate circuit; creating four divisions, with Central California alone as its own division, in order to more evenly distribute the caseload; and even adding Arizona to the Tenth Circuit.

Each of these proposals presents its own set of issues for consideration - as do the various circuit-splitting bills introduced in this Congress. Ultimately, the path Congress chooses to follow will depend on which criteria we deem to be most important in configuring a circuit: is the top priority to evenly balance the caseload? To preserve geographic contiguity? To avoid subdividing a State? To maintain circuit compactness?

As this process moves forward, I hope that all of the participants will keep in mind one criterion above all others: that is to ask, how does any of the proposed configurations of the Ninth Circuit (including the status quo) affect the litigants who will have cases before the court? How does it affect their access to a stable, reliable body of law by which they can arrange their affairs? And when disputes arise, how does the circuit's structure affect their ability to have a case decided quickly and efficiently? I think that by devoting our good-faith energies to this matter, and deciding which criteria are most important while always holding the interests of the court's "customers" above all others, Congress should be able to come to an agreement on how the U.S. Court of Appeals for the Ninth Circuit should be configured in the future.

I look forward to hearing the views of the distinguished witnesses before us today.

