

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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Ranking Member, Judiciary Committee
Hearing Before the Subcommittee on Administrative Oversight and the Courts
on "Revisiting Proposals to Split the Ninth Circuit"
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With less than two weeks remaining before the Supreme Court nominations hearings for Harriet Miers are scheduled to begin, I am disappointed that the Chairman has scheduled this hearing. Today's hearing, scheduled to coincide with a hearing on similar legislation in the House, is the latest in a series of unnecessary and partisan distractions that have diverted our attention at a time when the committee is working at break-neck speed to prepare for the Supreme Court hearings.

There are currently three proposals before the Senate to split the Ninth Circuit, one of which that goes so far as to divide the circuit into three. We reviewed similar legislation before this subcommittee last Congress and I continue to view attempts to alter the structure of our federal judiciary with skepticism. None of the proposals will result in a fair distribution of workload among the newly-created circuits or among the existing judges. Worse yet, some allege that these proposals to split the Ninth Circuit are partisan attempts to gerrymander our federal courts by making geographical alterations to suit the political winds.

The most pressing concern over these proposals is the substantial costs the judiciary would incur should the circuit be split. Yesterday, in a response to a request by Senator Feinstein, the Administrative Office of the United States Courts sent a cost estimate for implementing S. 1845 and H.R. 4093, two proposals that split the Ninth Circuit into two separate circuits. Their estimate concluded that start-up expenses alone could cost as much as \$95,855,172, with recurring costs ranging from \$13,140,049 to \$15,914,180. In a similar estimate in May 2004, the AO determined that judiciary could not sustain these crippling costs without receiving significant additional funding. At a time when the third branch is undergoing major budget cuts and the nation is coping with the enormous costs of war, rebuilding regions of our nation devastated by natural disasters and a growing deficit, I find the substantial costs of this legislation problematic.

Proponents of splitting the 9th Circuit into two or three circuits argue that smaller, rural states are at a disadvantage being lumped together with larger, heavily populated states like California. While I understand this argument, I am concerned that this legislation could be an attempt to manipulate the outcome of cases. Additionally, unlike the 1980 division of the 5th Circuit, this proposed division has very little support from the judges of the 9th Circuit. In a letter to this Subcommittee last year, Chief Judge Schroeder revealed the results of a mail ballot she sent to all

47 judges on the court. Only 9 of the Court's 47 judges favored a split, and only 3 of the 24 active judges favor a split. If these proposals to split the circuit were truly about the weight of the circuit's caseload, I would expect at least a majority of the judges would endorse one of these legislative proposals. The judges' overwhelming opposition should be taken seriously as we consider this legislation.

During the confirmation hearings of Chief Justice John Roberts, we all emphasized the importance of judicial independence. Unfortunately, the Ninth Circuit has been a convenient scapegoat for partisan critics of the judiciary. It would be a shame to see my Republican colleagues betray their own call for an end to the politicization of our judiciary by supporting legislation that would split the 9th Circuit as part of a campaign promise. I thank all our witnesses for traveling so far to be with us.