Federal Bar Association

Office of the President

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The Honorable Arlen Specter
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Patrick Leahy
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: September 20 Hearing on "Examining the Proposal to Restructure the Ninth Circuit"

Dear Chairman Specter and Senator Leahy:

I write in connection with your upcoming hearing on September 20 to examine S. 1845, "The Circuit Court of Appeals Restructuring and Modernization Act," which would restructure the Ninth Circuit Court of Appeals. I respectfully request that this letter be included in the hearing record.

Nearly a year ago in October 2005, the Judiciary Committee's Subcommittee on Administrative Oversight and the Courts held a hearing on splitting the Ninth Circuit. At that time the Federal Bar Association communicated its views on S. 1845 and other proposals that would split the Ninth Circuit, questioning their necessity and expressing concern over the impact they would bear upon efficient and effective judicial administration. Since then, no new legislative proposals have surfaced, and our views on S. 1845 remain largely the same.

As we said then, we do not favor any restructuring of the Ninth Circuit based upon ideological discontent with the case law developed by the judiciary of the Ninth Circuit. Our views on the merits of dividing the Ninth Circuit remain consistent with the overwhelming majority of lawyers and judges throughout the Ninth, who believe that the Circuit works well as currently configured and should remain intact. We remain unconvinced by the arguments of split proponents that size matters. Although the Ninth Circuit is the largest Circuit Court of Appeals in the nation in both population and caseload, what matters is not the size of the Circuit, but whether justice is being effectively and efficiently administered. The Ninth Circuit Court of Appeals is currently satisfactorily meeting that objective. While the day may come when changed circumstances cause us to revisit that conclusion, we believe the arguments against dividing the Ninth Circuit outweigh those for splitting it.

History demonstrates that Congress has divided a circuit only when there was conclusive proof that the administration of justice was not effectively occurring and a consensus among the bench, bar and public promoted division of the circuit as an appropriate solution. We do not believe that those conditions exist as to the question of splitting the Ninth Circuit at the current time. Our assessment is drawn from the active dialogue we maintain with the association's sixteen chapters in the Ninth Circuit, with a combined membership of nearly 3,000 lawyers and judges, and located throughout Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon and Washington.

Our opposition to legislative proposals to split the Ninth Circuit is further founded on concerns over its costs and its negative impact on current efficiencies. The Administrative Office of the United States Courts previously estimated the costs for splitting the Ninth Circuit under S.1845 (a two-way split) to require $95,855,172 in start-up costs and $15,914,180 in annual recurring costs. In times of increased anxiety over government spending and the size of the federal deficit, it would seem that more pressing national priorities should take precedent over these avoidable obligations. Moreover, we remain unconvinced by the suggestions of some that ample space already exists for housing the courtrooms, judicial chambers and administrative apparatus for a new Circuit or Circuits. The most effective means of administering justice in the federal courts in the states comprising the Ninth Circuit is a centralized administration and staff support. The economy of scale derived from a single administrative structure handling the affairs of the current Ninth Circuit will be diminished by the creation of new and costly duplicative physical arrangements and staffing (requiring a clerk of court, a circuit executive, staff attorneys, and technology) necessitated through any split.

Finally, we are also disturbed by the unfairness residing in the distribution of judicial resources under current split proposals. S. 1845 would cause the states remaining in the Ninth Circuit – California and Hawaii -- to take on significantly greater caseloads per judge than those states realigned into a new 12th Circuit. Far more permanent and temporary judgeships than are authorized by S. 1845 are required for the caseloads of the new Ninth Circuit and the new 12th Circuit to be equal.

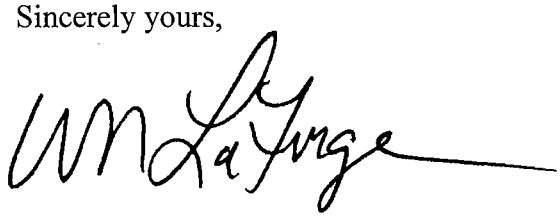
While we strongly support the Judicial Conference's request to authorize the creation of 68 Article III judgeships, including 12 new judgeships in five courts of appeals and 56 new judgeships in 29 district courts, we do not favor any linkage in Congressional action upon the comprehensive request of the Judicial Conference for additional judgeships beyond the Ninth Circuit and legislative proposals to split the Ninth Circuit. We believe that the establishment of those judgeships and the reconfiguration of the Ninth Circuit are entirely different issues, embodying separate and distinct considerations.

The FBA is the only nationwide bar association that has, as its primary focus, the jurisprudence and vitality of the United States federal court system and the practice of federal law. As I noted previously, of our 16,000 members across the United States, nearly 3,000 are lawyers and judges residing and practicing in the Ninth Circuit. Ours is the constituency whose members daily bear the consequences of the structure, caseload, adjudication and operation of the Ninth Circuit. Obviously, our members have a direct and significant interest in the outcome of any effort to split the Ninth Circuit Court of Appeals. We therefore ask the Committee to

refrain from approving legislative proposals to restructure the Ninth Circuit until there is demonstrable proof that the administration of justice is not effectively occurring and a consensus among the bench, bar and public agrees that division of the Circuit represents an appropriate solution.

Thank you very much for the consideration of our views.

Sincerely yours,



William N. LaForge
President