



The Honorable Lamar Smith  
Chair, Subcommittee on Courts, the  
Internet, and Intellectual Property  
Committee on the Judiciary  
B-352 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Howard L. Berman  
Ranking Member, Subcommittee on  
Courts, the Internet, and Intellectual Property  
Committee on the Judiciary  
B-352 Rayburn House Office Building  
Washington, D.C. 20515

October 24, 2005

Re: Oppose Bills to Split the U.S. Court of Appeals for the Ninth Circuit

Dear Chairman Smith and Representative Berman:

The American Civil Liberties Union urges you to oppose H.R. 4093, which would split the United States Court of Appeals for the Ninth Circuit into two new circuits. The new Ninth Circuit would consist of California, Hawaii, Guam, and the Northern Mariana Islands. The new Twelfth Circuit would have the remaining states from the present Ninth Circuit, namely, Alaska, Arizona, Idaho, Montana, Nevada, Oregon, and Washington.

The ACLU opposes any legislative proposal that disciplines federal judges other than removal by impeachment. Protecting the judiciary from legislative pressure is fundamental to maintaining an independent judiciary. In fact, the Constitution even prohibits Congress from reducing salaries for judges during their service. Redistricting the courts of appeals in response to disfavored judicial decisions is at least as threatening to separation of powers as a salary reduction.

Congress may revise the judicial map to account for population shifts or to balance judicial caseloads, but the proposed split of the more than century-old Ninth Circuit appears to be driven primarily by an interest in affecting the decisions of the new proposed appellate court by cordoning off those judges whose decisions some senators do not like. In fact, the legislation is so results oriented that it even ignores the historical practice of creating diversity within circuits by including at least three states. Enactment of any of these bills would send a message to judges that Congress seeks oversight over judicial decisions.

When Congress last seriously considered splitting the Ninth Circuit, in 1997, it instead set up a commission to consult with judges and practitioners in the affected states to develop a plan for promoting judicial economy and improving access to justice. The resulting commission recommended against splitting the Ninth Circuit. However, the commission also recommended numerous administrative reforms, which the Ninth Circuit is now implementing. The ACLU urges you to allow the Ninth Circuit to complete its changes and have them be tested by experience before reopening the possibility of splitting the circuit.

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RICHARD ZACKS  
TREASURER

Thank you for your attention to this matter. Please do not hesitate to call us at 202-675-2308 if you need any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Fredrickson', with a long horizontal flourish extending to the right.

Caroline Fredrickson  
Director

A handwritten signature in black ink, appearing to read 'Christopher E. Anders', with a long horizontal flourish extending to the right.

Christopher E. Anders  
Legislative Counsel