



STATE OF ARIZONA  
OFFICE OF THE GOVERNOR

DOUGLAS A. DUCEY  
GOVERNOR

EXECUTIVE OFFICE

October 30, 2015

The Honorable Paul Ryan  
Speaker of the House  
United States House of Representatives  
Washington, D.C. 20515

The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
Washington, D.C. 20510

Dear Speaker Ryan and Majority Leader McConnell:

The Ninth Circuit Court of Appeals, which includes the State of Arizona, needs reform. Indeed, the debate over whether to divide the court or realign Arizona with other states has been discussed for decades. The court's geographic size, voluminous caseload, and Supreme Court reversal rate has caused members of Congress, Justices of the Supreme Court, other federal judges, and scholars to call for its restructuring.

Under Article III of the Constitution, Congress may "ordain and establish" the inferior federal courts. Congress has exercised this power when necessary. In 1929, Congress created a new Tenth Circuit from the Eighth Circuit's mid-western states and in 1980 an Eleventh Circuit was established from Fifth Circuit states.

The Ninth Circuit is currently the most overturned court, having a 77% reversal rate. In 2010, it had three times as many reversals as most circuits had cases before the Supreme Court. Due to its geographic size – nine states and two possessions – the Ninth Circuit produces a voluminous docket resulting in delayed case resolution and inconsistent results. It is presently estimated that the court has 14,076 pending cases with a disposition time of 15 months. This is nearly three times as many as the next largest circuit's caseload.

These concerns have not gone unnoticed. There have been numerous calls to restructure the Ninth Circuit, including recommendations from the Hruska Commission in 1973 and the White Commission in 1998. In his report Justice Byron White recognized that the multitude of cases in the Ninth Circuit requires major reform. He found after surveying 205 federal appellate judges that "[t]he need to restructure will vary among the circuits, but as courts reach 18 to 20 judgeships, the need for restructuring becomes especially compelling, in order to maintain consistency and coherence." For example, Justice White noted "[t]he volume of opinions produced by the Ninth Circuit's Court of Appeals and the judges' overall workload combine to make it impossible for all the court's judges to read all the court's published opinions when they are issued."

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Justice Sandra Day O'Connor, in a letter to the White Commission, urged immediate reform. As circuit justice for the Ninth Circuit, Justice O'Connor emphasized problems with the court's inability to capitalize on the *en banc* procedure that benefits other smaller circuits. Among other alternatives, Justice O'Connor suggested placing Arizona in the Tenth Circuit.

The impact of the Ninth Circuit's disproportionate size is a national problem. In *The 115 Year-Old Ninth Circuit – Why a Split is Necessary and Inevitable*, the late Judge John Roll advocated restructuring the Ninth Circuit, stating “[i]f new boundaries were appropriately drawn ... all nine states of the Ninth Circuit and the administration of justice nationwide—would be well-served.”

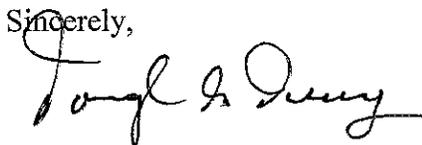
Congress has previously explored alternatives for Ninth Circuit reform. In 2006, Senators Jon Kyl, John Ensign, and Lisa Murkowski spoke in favor of a Ninth Circuit split. Former Chairman Sensenbrenner, in 2005, addressed the United States Judicial Conference stating, “[i]t is not a question if the Ninth will be split but when.”

I, therefore, respectfully request that you entertain appropriate legislation and convene hearings in both the House of Representatives and the Senate, where interested parties, scholars, and others may discuss alternatives for this long-overdue reform. To that end, Congress should specifically consider reorganizing the Ninth Circuit by realigning the District of Arizona with the Tenth Circuit, or by creating a new circuit court of appeals consisting of Arizona and other non-coastal states.

Should Congress gather sufficient evidence supporting Ninth Circuit reform, which I trust that it will, I ask that legislation be advanced as part of any must-pass legislation considered during the final 15 months of the 114th Congress. I have spoken with leaders in the AZ Congressional delegation and they are willing to provide leadership in helping work this through the legislative process.

I wish you much success in the 114<sup>th</sup> Congress and thank you for your continued service to the nation.

Sincerely,



Douglas A. Ducey  
Governor  
State of Arizona