

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

ALEX KOZINSKI  
Chief Judge

August 14, 2014

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The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

I am Chief Judge of the Ninth Circuit and therefore a member of the Judicial Conference of the United States, the policy-making body of the Federal Judiciary. For the last six and a half years or so, I have had the pleasure of seeing you appear at our semi-annual meetings, held in the Supreme Court East Conference Room.

I am writing in regard to a letter sent to you on August 5, 2014, by The Honorable John D. Bates, Director of the Administrative Office of the United States Courts. In that letter, Director Bates comments on legislation now pending in the Senate, namely the USA FREEDOM Act, S. 2685. In so doing, Director Bates purports to speak “on behalf of the Judiciary,” and frequently uses the first-person-plural pronoun “we” in stating his views. I understand “we” to refer to the federal judiciary.

I was not aware of Director Bates’s letter before it was sent, nor did I receive a copy afterwards. I first learned of the letter this past weekend when a copy was sent to me by a distinguished law professor. I write to clear up any misunderstanding that might arise as to whose views the letter represents.

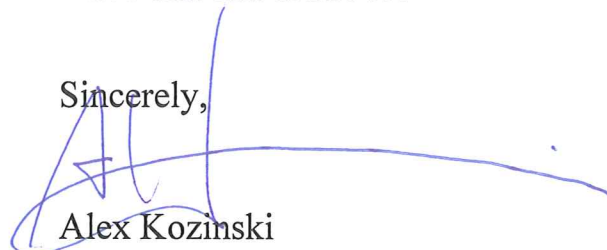
As Judge Bates states in an earlier letter to you, one dated January 13, 2014 (a letter of which I was also not aware until it was brought to my attention by said professor), “[t]raditionally, the views of the Judiciary on legislative matters are expressed through the Judicial Conference of the United States, for which [Judge Bates] serve[s] as Secretary. However, because the matters at issue here relate to special expertise and experience of only a small number of judges on two

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specialized courts, the Conference has not at this time been engaged to deliberate on them.” This situation has not changed between the January 13 letter and the August 5 letter.

The matters raised by S. 2685 and Director Bates’s letters are of profound significance and merit the closest consideration. I have not, however, had an opportunity to study them and make an informed decision because, as Director Bates notes, “the [Judicial] Conference has not at this time been engaged to deliberate on them.” Were the matter put before the Judicial Conference, I would certainly take the time to study it, form an opinion and cast a vote, after considering the views of my Judicial Conference colleagues. And, whatever the outcome, I’d feel bound by that decision. But, having given the matter little consideration, and having had no opportunity to deliberate with the other members of the Judicial Conference, I have serious doubts about the views expressed by Judge Bates. Insofar as Judge Bates’s August 5th letter may be understood as reflecting my views, I advise the Committee that this is not so.

Sincerely,



Alex Kozinski

AK/dms

cc: The Honorable Charles E. Grassley  
The Honorable Dianne Feinstein  
The Honorable Saxby Chambliss  
The Honorable Eric H. Holder, Jr.  
The Honorable John D. Bates