

STATE OF ALASKA THE LEGISLATURE

2003

Source
HCS SJR 8(JUD)

**Legislative
Resolve No.**
35



Relating to the division of the Ninth Circuit Court of Appeals.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS the United States Court of Appeals for the Ninth Circuit encompasses the States of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington, as well as the Commonwealth of the Northern Marianas Islands and Guam; and

WHEREAS the United States Court of Appeals for the Ninth Circuit oversees nearly one-fifth of the population of the United States, and has nearly twice as many judges as the next largest circuit court; and

WHEREAS a distinguished commission appointed by the United States Congress and chaired by the Honorable Byron R. White, Associate Justice of the United States Supreme Court, recommended that the Ninth Circuit as an adjudicative entity be divided; and

WHEREAS, when that distinguished panel solicited the opinions of the Justices of the United States Supreme Court, four out of the five who responded endorsed splitting the Ninth Circuit; and

WHEREAS the White Commission further noted that "in our opinion, apparently

shared by more than two-thirds of all federal, appellate judges, the maximum number of judges for an effective appellate court functioning as a single decisional unit is somewhere between eleven and seventeen"; and

WHEREAS the Ninth Circuit has 28 seats for active judges and a total of 45 active and senior judges currently active on the court, a size far larger than the maximum recommended by the White Commission; and

WHEREAS the size of the Ninth Circuit requires that en banc decisions be heard in panels of 11 judges, less than half of the 28-judge court, resulting in majority decisions of only six judges, less than one-fourth of the 28-judge court, that are cited to reflect the judgment of the circuit as a whole; and

WHEREAS, in order for a court to produce a thorough and coherent body of law, the judges on that court must each be familiar with all the opinions published by that court; and

WHEREAS the Ninth Circuit produced 504 published opinions and 3,744 unpublished opinions in 2002 and regularly produces a quantity of written opinions that makes it virtually impossible for each judge to thoroughly review each opinion; and

WHEREAS the White Commission said "[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"; and

WHEREAS this inability to read the corpus of published law in the circuit makes the production of consistent, coherent decisions impractical and results in frequent errors by the court, as demonstrated by its having the highest rate of reversal by the United States Supreme Court of any appellate court in the nation; and

WHEREAS the Ninth Circuit was reversed five of the first six times it was reviewed in the October 2002 term, including three unanimous and per curiam reversals; and

WHEREAS a 2002 statistical survey conducted by the Honorable Richard A. Posner, a judge on the United States Court of Appeals for the Seventh Circuit, demonstrated a statistically significant correlation between an increase in the number of judgeships on a court and the rate at which that court was reversed on review; and

WHEREAS the Chief Justice of the United States Supreme Court's 2002 Year-End Report on the Federal Judiciary states that appellate filings in the Ninth Circuit have increased

by more than 115 percent since new judgeships were last established, an increase in workload considerably higher than that of any other circuit court; and

WHEREAS appeals filed in the Ninth Circuit increased by over 10 percent in the year 2002 alone, a year in which filings in the appellate courts nationwide increased by only 0.2 percent; and

WHEREAS the Ninth Circuit received nearly 20 percent of all pro se filings in the federal appellate courts last year; and

WHEREAS the Ninth Circuit, which handles more than 50 percent of the nation's immigration cases, has, as a result of new requirements that the Immigration and Naturalization Service clear out their backlog of cases by March 25, 2003, begun receiving an average of 150 petitions for review a week, a nearly 500 percent increase over past years; the Ninth Circuit's immigration case load is likely to increase even more in the coming years; and

WHEREAS cases involving crucial federal legislation affecting Alaska exclusively, such as the Alaska Native Claims Settlement Act and the Alaska National Interest Land Conservation Act, require great familiarity with the legislation to properly adjudicate, due to the great complexity of the legislation; and

WHEREAS a Ninth Circuit judge cannot attain the necessary familiarity with federal legislation affecting Alaska because a Ninth Circuit judge may only sit on a panel in Alaska once every 10 years, as a result of the extraordinary size of the court; and

WHEREAS this unfamiliarity has resulted in decisions that have caused great political turmoil in Alaska; and

WHEREAS the issue of splitting the Ninth Circuit has arisen repeatedly, consuming vital judicial and legislative resources, a drain on judges' and legislators' time that will continue until the Ninth Circuit is split; and

WHEREAS Alaska Senators Ted Stevens and Frank Murkowski, along with other United States Senators, cosponsored S. 2184 in 2000 and S. 346 in 2001, endorsing a division of the current Ninth Circuit into two circuits, the Ninth and the Twelfth, with the resulting Ninth Circuit encompassing only Arizona, Nevada, and California, and the Twelfth Circuit encompassing the rest, which would be an excellent solution to the current problem and beneficial to Alaska; and

WHEREAS Idaho Congressman Mike Simpson introduced H.R. 1203 in 2001, a

companion bill that would divide the Ninth Circuit in the same way; and

WHEREAS, when the former Fifth Circuit grew too large, both the judges of the court and members of Congress recognized the problems caused by its size and, in 1980, split the court successfully into the Fifth and Eleventh Circuits;

BE IT RESOLVED that the Alaska State Legislature respectfully requests the United States Congress to divide the United States Court of Appeals for the Ninth Circuit into two more circuit courts in order to resolve the problems caused by its size.

COPIES of this resolution shall be sent to the Honorable Richard B. Cheney, Vice-President of the United States and President of the U.S. Senate; the Honorable Ted Stevens, President Pro Tempore of the U.S. Senate and member of the Alaska delegation in Congress; the Honorable J. Dennis Hastert, Speaker of the U.S. House of Representatives; the Honorable Bill Frist, Majority Leader of the U.S. Senate; the Honorable Tom DeLay, Majority Leader of the U.S. House of Representatives; the Honorable Thomas Daschle, Minority Leader of the U.S. Senate; the Honorable Nancy Pelosi, Minority Leader of the U.S. House of Representatives; the Honorable Orrin B. Hatch, Chair of the U.S. Senate Committee on the Judiciary; the Honorable F. James Sensenbrenner, Jr., Chair of the U.S. House Committee on the Judiciary; and to the Honorable Lisa Murkowski, U.S. Senator, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.