

HOUSE JOINT RESOLUTION NO. 13

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES EASTMAN, Kopp, Chenault, Rauscher, Johnson, Wilson, Johnston, Tilton, Reinbold, Thompson, Saddler, Sullivan-Leonard, Millett, Pruitt, Talerico, Birch, Knopp, Neuman

Introduced: 2/24/17

Referred: State Affairs, Judiciary

A RESOLUTION

1 **Urging the United States Congress to divide the United States Court of Appeals for the**
2 **Ninth Circuit.**

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

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

7 **WHEREAS**, of the 12 regional circuits in operation today, the Ninth Circuit includes
8 one-fifth of the population of the entire United States and is 85 percent larger than the next
9 largest circuit court; and

10 **WHEREAS** the Ninth Circuit consistently dispenses justice more slowly than any
11 other circuit court in the nation, and had an average case-processing time over the last five
12 years that is a number of months slower than the next slowest circuit court; and

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

16 **WHEREAS**, when that distinguished panel solicited the opinions of the Justices of

1 the United States Supreme Court, four out of the five who responded endorsed splitting the
2 Ninth Circuit; and

3 **WHEREAS** the size of the Ninth Circuit requires that en banc decisions be heard in
4 panels of 11 judges, less than half of the 29-judge court, resulting in majority decisions of
5 only six judges that are cited to reflect the judgment of the circuit as a whole; and

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

8 **WHEREAS** the Ninth Circuit produced 557 published opinions and 5,994
9 unpublished opinions in 2015 alone and regularly produces a quantity of written opinions that
10 make it impossible for each judge to be sufficiently familiar with each opinion; and

11 **WHEREAS** the White Commission said "[t]he volume of opinions produced by the
12 Ninth Circuit's Court of Appeals and the judges' overall workload combine to make it
13 impossible for all the court's judges to read all the court's published opinions when they are
14 issued"; and

15 **WHEREAS** this inability to read the corpus of published law in the circuit makes the
16 production of consistent, coherent decisions impractical and results in frequent errors by the
17 court, as demonstrated by its consistently having a higher-than-average rate of reversal by the
18 United States Supreme Court; and

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

23 **WHEREAS**, in 2015, the most recent year for which data is available, the Ninth
24 Circuit had 22.5 percent of all new appeals nationally, a workload considerably higher than
25 that of any other circuit court; and

26 **WHEREAS** cases involving crucial federal legislation affecting Alaska exclusively,
27 such as the Alaska Native Claims Settlement Act and the Alaska National Interest Lands
28 Conservation Act, require great familiarity with the legislation to properly adjudicate because
29 of the great complexity of the legislation; and

30 **WHEREAS** a Ninth Circuit judge cannot attain the necessary familiarity with federal
31 legislation affecting Alaska because a Ninth Circuit judge may only sit on a panel in Alaska

1 once every 10 years, as a result of the extraordinary size of the court; and

2 **WHEREAS** this unfamiliarity has resulted in decisions that have deprived Alaskans
3 of their rights under the United States Constitution and federal law, as demonstrated in the
4 recent U.S. Supreme Court Case *Sturgeon v. Frost*, in which the U.S. Supreme Court, in a
5 unanimous decision, rejected the decision of the Ninth Circuit; and

6 **WHEREAS** such cases often involve lengthy and expensive litigation, and even with
7 the recent victory at the Supreme Court, *Sturgeon v. Frost* remains locked in the court system,
8 now 10 years since the incident that gave rise to it; and

9 **WHEREAS**, in the current fiscal environment, the state lacks sufficient legal
10 resources to successfully appeal every error made by the Ninth Circuit; and

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

14 **WHEREAS** Alaska Senators Lisa Murkowski and Dan Sullivan have each sponsored
15 or cosponsored current legislation in the form of S. 295, Circuit Court of Appeals
16 Restructuring and Modernization Act, and S. 296, Federal Courts of Appeals Modernization
17 Act, endorsing a division of the current Ninth Circuit into two circuits, the Ninth and the
18 Twelfth, with the resulting Twelfth Circuit encompassing the states of Alaska, Arizona,
19 Idaho, Montana, Nevada, Oregon, and Washington, which would be a welcome solution to
20 the current problem and beneficial to Alaska; and

21 **WHEREAS**, even with this division, the newly created Twelfth Circuit would still
22 encompass as many states as the most numerous of any circuit court; and

23 **WHEREAS**, when the former Eighth Circuit grew too large, the United States
24 Congress recognized the problems caused by its size and successfully split the court into the
25 Eighth and Tenth Circuits; and

26 **WHEREAS**, when the Fifth Circuit grew too large, the United States Congress
27 recognized the problems caused by its size and, in 1981, successfully split the court into the
28 Fifth and Eleventh Circuits;

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

1 **COPIES** of this resolution shall be sent to the Honorable Michael R. Pence, Vice
2 President of the United States and President of the U.S. Senate; the Honorable Orrin Hatch,
3 President pro tempore of the U.S. Senate; the Honorable Paul D. Ryan, Speaker of the U.S.
4 House of Representatives; the Honorable Mitch McConnell, Majority Leader of the U.S.
5 Senate; the Honorable Kevin McCarthy, Majority Leader of the U.S. House of
6 Representatives; the Honorable Charles E. Schumer, Minority Leader of the U.S. Senate; the
7 Honorable Nancy Pelosi, Minority Leader of the U.S. House of Representatives; the
8 Honorable Chuck Grassley, Chair of the U.S. Senate Committee on the Judiciary; the
9 Honorable Bob Goodlatte, Chair of the U.S. House Committee on the Judiciary; and the
10 Honorable Lisa Murkowski and the Honorable Dan Sullivan, U.S. Senators, and the
11 Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.