

of it not working. The United States has been immune from that. Now is the time to have a tax cut, and the best kind is across-the-board to make sure that we are adding to the American economy an ingredient that is apt to keep us going at this formidable rate of sustained growth and jobs and prosperity. That means a tax cut now for the American people and for the future prosperity of our country.

In addition, I suggest that people ought to look at what the President proposed to do with this surplus. I am amazed. This surplus—which is taxpayers' money, that is in excess of Social Security—the President has now decided he knows precisely how to use it. Every bit of it is spent, I say to my friend, Senator THURMOND: New programs, new ideas, new needs, even some money for Medicare. And we have never heretofore put general taxpayers' money in Medicare. So he wants to spend it all and the taxpayers will get none of it back.

It seems to this Senator that that is a good issue to take to the public, to take to the people of this land. What do you want to do with this surplus? Do you want a bigger Government and spend more of it? Or spend all of it? Or do you want to give some of it back to the taxpayers who work hard in this land to make ends meet and truly, truly are the engines of this growth period we have had? Hard-working Americans caused this to happen. There is higher productivity because they are more skilled and their employers are using new equipment and new technology—higher productivity, more jobs.

Surplus means to me that taxpayers should get some benefit. We are going to work very hard to see to it that the people understand it and we have a real opportunity to help them if they will help us.

I yield the floor.

Mr. COVERDELL. Mr. President, I thank the distinguished Senator from New Mexico.

PROVIDING FOR THE INTRODUCTION OF LEGISLATION AND SUBMISSION OF STATEMENTS

Mr. LOTT. Mr. President, I ask unanimous consent that on Thursday and Friday it be in order for Senators to introduce legislation and to submit statements at the desk during the Senate's consideration of the articles of impeachment.

The PRESIDING OFFICER. Without objection, it is so ordered.

APPOINTMENTS BY THE MAJORITY LEADER

The PRESIDING OFFICER. The Chair, on behalf of the Majority Leader, pursuant to Public Law 104-293, as amended by Public Law 105-277, announces the appointment of the following individuals to serve as members of the Commission to Assess the Orga-

zation of the Federal Government to Combat the Proliferation of Weapons of Mass Destruction: M. D. B. Carlisle, of Washington, D.C. and Henry D. Sokolski, of Virginia.

The Chair, on behalf of the Majority Leader, pursuant to Public Law 105-255, announces the appointment of the following individuals to serve as members of the Commission on the Advancement of Women and Minorities in Science, Engineering and Technology Development: Judy L. Johnson, of Mississippi and Elaine M. Mendoza, of Texas.

The Chair, on behalf of the Majority Leader, pursuant to Public Law 105-277, announces the appointment of the following individuals to serve as members of the International Financial Institution Advisory Commission: Charles W. Calomiris, of New York and Edwin J. Feulner, Jr., of Virginia.

The Chair, on behalf of the Majority Leader, pursuant to Public Law 105-277, announces the appointment of the following individuals to serve as members of the National Commission on Terrorism: Wayne A. Downing, of Colorado, Fred Ikle, of Maryland, and John F. Lewis, of New York.

The Chair, on behalf of the Majority Leader, after consultation with the Democratic Leader, pursuant to Public Law 93-415, as amended by Public Law 102-586, announces the appointment of William Keith Oubre, of Mississippi, to serve as a member of the Coordinating Council on Juvenile Justice and Delinquency Prevention, vice Robert H. Maxwell, of Mississippi.

APPOINTMENT BY THE DEMOCRATIC LEADER

The PRESIDING OFFICER. The Chair, on behalf of the Democratic Leader, pursuant to Public Law 105-83, announces the appointment of the Senator from Illinois (Mr. DURBIN) as a member of the National Council on the Arts.

FEDERAL NINTH CIRCUIT REORGANIZATION ACT OF 1999—S. 253

Statements on the bill, S. 2616, introduced on October 9, 1998, did not appear in the RECORD. The material follows:

By Mr. MURKOWSKI (for himself and Mr. GORTON):

S. 253. A bill to provide for the reorganization of the Ninth Circuit Court of Appeals, and for other purposes.

FEDERAL NINTH CIRCUIT REORGANIZATION ACT OF 1999

Mr. MURKOWSKI. Mr. President, I am pleased to be joined by my distinguished colleague from Washington, Senator SLADE GORTON, in introducing legislation that will go far in improving the consistency, predictability and coherency of case law in the Ninth Circuit U.S. Court of Appeals.

Our bill, The Federal Ninth Circuit Reorganization Act of 1999, adopts the recommendations of a Congressionally-

mandated Commission that studied the alignment of the U.S. Court of Appeals. Retired Supreme Court Justice Byron R. White, chaired the scholarly Commission.

The Commission's Report, released last December, calls for a division of the Ninth Circuit into three regionally based adjudicative divisions—the Northern, Middle, and Southern. Each of these regional divisions would maintain a majority of its judges within its region. Each division would have exclusive jurisdiction over appeals from the judicial districts within its region. Further, each division would function as a semi-autonomous decisional unit. To resolve conflicts that may develop between regions, a Circuit Division for Conflict Correction would replace the current limited and ineffective en banc system. Lastly, the Circuit would remain intact as an administrative unit, functioning as it now does.

It is important to note that the Commission adopted the arguments that I and several other Senators have put forth to justify a complete division of the Ninth Circuit—Circuit population, record caseloads, and inconsistency in judicial decisions. However, the Commission rejected an administrative division because it believed it would "deprive the courts now in the Ninth Circuit of the administrative advantages afforded by the present circuit configuration and deprive the West and the Pacific seaboard of a means for maintaining uniform federal law in that area."

While I don't necessarily reach the same conclusion as the Commission (that an administrative division of the Ninth Circuit is not warranted), I strongly agree with the Committee's conclusion that the restructuring of the Ninth Circuit as proposed in the Commission's Report will "increase the consistency and coherence of the law, maximize the likelihood of genuine collegiality, establish an effective procedure for maintaining uniform decisional law within the circuit, and relate the appellate forum more closely to the region it serves."

Mr. President, swift Congressional action is needed. One need only look at the contours of the Ninth Circuit to see the need for this reorganization. Stretching from the Arctic Circle to the Mexican border, past the tropics of Hawaii and across the International Dateline to Guam and the Mariana Islands, by any means of measurement, the Ninth Circuit is the largest of all U.S. Circuit Courts of Appeal.

The Ninth Circuit serves a population of more than 49 million people, well over a third more than the next largest Circuit. By 2010, the Census Bureau estimates that the Ninth Circuit's population will be more than 63 million—a 40 percent increase in just 13 years, which inevitably will create an even more daunting caseload.

Because of its massive size, there often results a decrease in the ability of judges to keep abreast of legal developments within the Ninth Circuit. This

unwieldy caseload creates an inconsistency in Constitutional interpretation. In fact, Ninth Circuit cases have an extraordinarily high reversal rate by the Supreme Court. (During the Supreme Court's 1996-97 session, the Supreme Court overturned 95% of the Ninth Circuit cases heard by the Court.) This lack of Constitutional consistency discourages settlements and leads to unnecessary litigation.

Ninth Circuit Judge Diramuid O'Scannlain described the problem as follows:

An appellate court must function as a unified body, and it must speak with a unified voice. It must maintain and shape a coherent body of law * * *. As the number of opinions increase, we judges risk losing the ability to keep track of precedents and the ability to know what our circuit's law is. In short, bigger is not better.

The legislation that Senator GORTON and I introduce today is a sensible reorganization of the Ninth Circuit. The Northern Division of the Ninth Circuit would join Alaska, Washington, Oregon, Montana, and Idaho. This proposal reflects legislation I introduced in the last Congress which created a new Twelfth Circuit consisting of the States of the Northwest. Like my previous legislation, the Commission's report will go far in creating regional commonality and greater consistency and dependency in legal decisions.

However, it is my strong suggestion that when the Senate Judiciary Committee conducts hearings on this legislation, certain modifications be closely examined:

1. Elimination of the requirement that judges within a region are required to rotate to other regions of the Circuit;

2. Adjustment of the regional alignments to include Hawaii, the Mariana Islands and the Territory of Guam in the Northern Region; and

3. Shortening the period in which the Federal Judicial Center conducts a study of the effectiveness and efficiency of the Ninth Circuit divisions from eight years to three years.

Mr. President, Congress has waited long enough to correct the problems of the Ninth Circuit. The 49 million residents of the Ninth Circuit are the persons that suffer. Many wait years before cases are heard and decided, prompting many to forego the entire appellate process. The Ninth Circuit has become a circuit where justice is not swift and not always served.

Mr. President, we have known the problem of the Ninth Circuit for a long time. It's time to solve the problem. The Commission's recommendations, as reflected in our legislation, is a good first start. I hope we can resolve this issue this year.

I ask unanimous consent that the text of our legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 253

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Ninth Circuit Reorganization Act of 1999".

SEC. 2. DIVISIONAL ORGANIZATION OF THE COURT OF APPEALS FOR THE NINTH CIRCUIT.

(a) REGIONAL DIVISIONS.—Effective 180 days after the date of enactment of this Act, the United States Court of Appeals for the Ninth Circuit shall be organized into 3 regional divisions designated as the Northern Division, the Middle Division, and the Southern Division, and a nonregional division designated as the Circuit Division.

(b) REVIEW OF DECISIONS.—

(1) NONAPPLICATION OF SECTION 1294.—Section 1294 of title 28, United States Code, shall not apply to the Ninth Circuit Court of Appeals. The review of district court decisions shall be governed as provided in this subsection.

(2) REVIEW.—Except as provided in sections 1292(c), 1292(d), and 1295 of title 28, United States Code, once the court is organized into divisions, appeals from reviewable decisions of the district and territorial courts located within the Ninth Circuit shall be taken to the regional divisions of the Ninth Circuit Court of Appeals as follows:

(A) Appeals from the districts of Alaska, Guam, Hawaii, Idaho, Montana, the Northern Mariana Islands, Oregon, Eastern Washington, and Western Washington shall be taken to the Northern Division.

(B) Appeals from the districts of Eastern California, Northern California, and Nevada shall be taken to the Middle Division.

(C) Appeals from the districts of Arizona, Central California, and Southern California shall be taken to the Southern Division.

(D) Appeals from the Tax Court, petitions to enforce the orders of administrative agencies, and other proceedings within the court of appeals' jurisdiction that do not involve review of district court actions shall be filed in the court of appeals and assigned to the division that would have jurisdiction over the matter if the division were a separate court of appeals.

(3) ASSIGNMENT OF JUDGES.—Each regional division shall include from 7 to 11 judges of the court of appeals in active status. A majority of the judges assigned to each division shall reside within the judicial districts that are within the division's jurisdiction as specified in paragraph (2). Judges in senior status may be assigned to regional divisions in accordance with policies adopted by the court of appeals. Any judge assigned to 1 division may be assigned by the chief judge of the circuit for temporary duty in another division as necessary to enable the divisions to function effectively.

(4) PRESIDING JUDGES.—Section 45 of title 28, United States Code, shall govern the designation of the presiding judge of each regional division as though the division were a court of appeals, except that the judge serving as chief judge of the circuit may not at the same time serve as presiding judge of a regional division, and that only judges resident within, and assigned to, the division shall be eligible to serve as presiding judge of that division.

(5) PANELS.—Panels of a division may sit to hear and decide cases at any place within the judicial districts of the division, as specified by a majority of the judges of the division. The divisions shall be governed by the Federal Rules of Appellate Procedure and by local rules and internal operating procedures adopted by the court of appeals. The divisions may not adopt their own local rules or

internal operating procedures. The decisions of 1 regional division shall not be regarded as binding precedents in the other regional divisions.

(c) CIRCUIT DIVISION.—

(1) IN GENERAL.—In addition to the 3 regional divisions specified under subsection (a), the Ninth Circuit Court of Appeals shall establish a Circuit Division composed of the chief judge of the circuit and 12 other circuit judges in active status, chosen by lot in equal numbers from each regional division. Except for the chief judge of the circuit, who shall serve ex officio, judges on the Circuit Division shall serve nonrenewable, staggered terms of 3 years each. One-third of the judges initially selected by lot shall serve terms of 1 year each, one-third shall serve terms of 2 years each, and one-third shall serve terms of 3 years each. Thereafter all judges shall serve terms of 3 years each. If a judge on the Circuit Division is disqualified or otherwise unable to serve in a particular case, the presiding judge of the regional division to which that judge is assigned shall randomly select a judge from the division to serve in the place of the unavailable judge.

(2) JURISDICTION.—The Circuit Division shall have jurisdiction to review, and to affirm, reverse, or modify any final decision rendered in any of the court's divisions that conflicts on an issue of law with decision in another division of the court. The exercise of such jurisdiction shall be within the discretion of the Circuit Division and may be invoked by application for review by a party to the case, setting forth succinctly the issue of law as to which there is a conflict in the decisions of 2 or more divisions. The Circuit Division may review the decision of a panel within a division only if en banc review of the decision has been sought and denied by the division.

(3) PROCEDURES.—The Circuit Division shall consider and decide cases through procedures adopted by the court of appeals for the expeditious and inexpensive conduct of the division's business. The Circuit Division shall not function through panels. The Circuit Division shall decide issues of law on the basis of the opinions, briefs, and records in the conflicting decisions under review, unless the Circuit Division determines that special circumstances make additional briefing or oral argument necessary.

(4) EN BANC PROCEEDINGS.—Section 46 of title 28, United States Code, shall apply to each regional division of the Ninth Circuit Court of Appeals as though the division were the court of appeals. Section 46(c) of title 28, United States Code, authorizing hearings or rehearings en banc, shall be applicable only to the regional divisions of the court and not to the court of appeals as a whole. After a divisional plan is in effect, the court of appeals shall not order any hearing or rehearing en banc, and the authorization for a limited en banc procedure under section 6 of Public Law 95-486 (92 Stat. 1633), shall not apply to the Ninth Circuit. An en banc proceeding ordered before the divisional plan is in effect may be heard and determined in accordance with applicable rules of appellate procedure.

(d) CLERKS AND EMPLOYEES.—Section 711 of title 28, United States Code, shall apply to the Ninth Circuit Court of Appeals, except the clerk of the Ninth Circuit Court of Appeals may maintain an office or offices in each regional division of the court to provide services of the clerk's office for that division.

(e) STUDY OF EFFECTIVENESS.—The Federal Judicial Center shall conduct a study of the effectiveness and efficiency of the divisions in the Ninth Circuit Court of Appeals. No later than 3 years after the effective date of this Act, the Federal Judicial Center shall submit to the Judicial Conference of the

United States a report summarizing the activities of the divisions, including the Circuit Division, and evaluating the effectiveness and efficiency of the divisional structure. The Judicial Conference shall submit recommendations to Congress concerning the divisional structure and whether the structure should be continued with or without modification.

SEC. 2. ASSIGNMENT OF JUDGES; PANELS; EN BANC PROCEEDINGS; DIVISIONS; QUORUM.

(a) IN GENERAL.—Section 46 of title 28, United States Code, is amended to read as follows:

“§ 46. Assignment of judges; panels; en banc proceedings; divisions; quorum

“(a) Circuit judges shall sit on the court of appeals and its panels in such order and at such times as the court directs.

“(b) Unless otherwise provided by rule of court, a court of appeals or any regional division thereof shall consider and decide cases and controversies through panels of 3 judges, at least 2 of whom shall be judges of the court, unless such judges cannot sit because recused or disqualified, or unless the chief judge of that court certifies that there is an emergency including, but not limited to, the unavailability of a judge of the court because of illness. A court may provide by rule for the disposition of appeals through panels consisting of 2 judges, both of whom shall be judges of the court. Panels of the court shall sit at times and places and hear the cases and controversies assigned as the court directs. The United States Court of Appeals for the Federal Circuit shall determine by rule a procedure for the rotation of judges from panel-to-panel to ensure that all of the judges sit on a representative cross section of the cases heard and, notwithstanding the first sentence of this subsection, may determine by rule the number of judges, not less than 2, who constitute a panel.

“(c) Notwithstanding subsection (b), a majority of the judges of a court of appeals not organized into divisions as provided in subsection (d) who are in regular active service may order a hearing or rehearing before the court en banc. A court en banc shall consist of all circuit judges in regular active service, except that any senior circuit judge of the circuit shall be eligible to participate, at that judge's election and upon designation and assignment pursuant to section 294(c) and the rules of the circuit, as a member of an en banc court reviewing a decision of a panel of which such judge was a member.

“(d)(1) A court of appeals having more than 15 authorized judgeships may organize itself into 2 or more adjudicative divisions, with each judge of the court assigned to a specific division, either for a specified term of years or indefinitely. The court's docket shall be allocated among the divisions in accordance with a plan adopted by the court, and each division shall have exclusive appellate jurisdiction over the appeals assigned to it. The presiding judge of each division shall be determined from among the judges of the division in active status as though the division were the court of appeals, except the chief judge of the circuit shall not serve at the same time as the presiding judge of a division.

“(2) When organizing itself into divisions, a court of appeals shall establish a circuit division, consisting of the chief judge and additional circuit judges in active status, selected in accordance with rules adopted by the court, so as to make an odd number of judges but not more than 13.

“(3) The circuit division shall have jurisdiction to review, and to affirm, reverse, or modify any final decision rendered in any of the court's divisions that conflicts on an

issue of law with a decision in another division of the court. The exercise of such jurisdiction shall be within the discretion of the circuit division and may be invoked by application for review by a party to the case, setting forth succinctly the issue of law as to which there is a conflict in the decisions of 2 or more divisions. The circuit division may review the decision of a panel within a division only if en banc review of the decision has been sought and denied by the division.

“(4) The circuit division shall consider and decide cases through procedures adopted by the court of appeals for the expeditious and inexpensive conduct of the circuit division's business. The circuit division shall not function through panels. The circuit division shall decide issues of law on the basis of the opinions, briefs, and records in the conflicting decisions under review, unless the division determines that special circumstances make additional briefing or oral argument necessary.

“(e) This section shall apply to each division of a court that is organized into divisions as though the division were the court of appeals. Subsection (c), authorizing hearings or rehearings en banc, shall be applicable only to the divisions of the court and not to the court of appeals as a whole, and the authorization for a limited en banc procedure under section 6 of Public Law 95-486 (92 Stat. 1633), shall not apply in that court. After a divisional plan is in effect, the court of appeals shall not order any hearing or rehearing en banc, but an en banc proceeding already ordered may be heard and determined in accordance with applicable rules of appellate procedure.

“(f) A majority of the number of judges authorized to constitute a court, a division, or a panel thereof shall constitute a quorum.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 3 of title 28, United States Code, is amended by amending the item relating to section 46 to read as follows:

“46. Assignment of judges; panels; en banc proceedings; divisions; quorum.”.

(c) MONITORING IMPLEMENTATION.—The Federal Judicial Center shall monitor the implementation of section 46 of title 28, United States Code (as amended by this section) for 3 years following the date of enactment of this Act and report to the Judicial Conference such information as the Center determines relevant or that the Conference requests to enable the Judicial Conference to assess the effectiveness and efficiency of this section.

SEC. 3. DISTRICT COURT APPELLATE PANELS.

(a) IN GENERAL.—Chapter 5 of title 28, United States Code, is amended by adding after section 144 the following:

“§ 145. District Court Appellate Panels

“(a) The judicial council of each circuit may establish a district court appellate panel service composed of district judges of the circuit, in either active or senior status, who are assigned by the judicial council to hear and determine appeals in accordance with subsection (b). Judges assigned to the district court appellate panel service may continue to perform other judicial duties.

“(b) An appeal heard under this section shall be heard by a panel composed of 2 district judges assigned to the district court appellate panel service, and 1 circuit judge as designated by the chief judge of the circuit. The circuit judge shall preside. A district judge serving on an appellate panel shall not participate in the review of decisions of the district court to which the judge has been appointed. The clerk of the court of appeals shall serve as the clerk of the district court appellate panels. A district court appellate

panel may sit at any place within the circuit, pursuant to rules promulgated by the judicial council, to hear and decide cases, for the convenience of parties and counsel.

“(c) In establishing a district court appellate panel service, the judicial council shall specify the categories or types of cases over which district court appellate panels shall have appellate jurisdiction. In such cases specified by the judicial council as appropriate for assignment to district court appellate panels, and notwithstanding sections 1291 and 1292, the appellate panel shall have exclusive jurisdiction over district court decisions and may exercise all of the authority otherwise vested in the court of appeals under sections 1291, 1292, 1651, and 2106. A district court appellate panel may transfer a case within its jurisdiction to the court of appeals if the panel determines that disposition of the case involves a question of law that should be determined by the court of appeals. The court of appeals shall thereupon assume jurisdiction over the case for all purposes.

“(d) Final decisions of district court appellate panels may be reviewed by the court of appeals, in its discretion. A party seeking review shall file a petition for leave to appeal in the court of appeals, which that court may grant or deny in its discretion. If a court of appeals is organized into adjudicative divisions, review of a district court appellate panel decision shall be in the division to which an appeal would have been taken from the district court had there been no district court appellate panel.

“(e) Procedures governing review in district court appellate panels and the discretionary review of such panels in the court of appeals shall be in accordance with rules promulgated by the court of appeals.

“(f) After a judicial council of a circuit makes an order establishing a district court appellate panel service, the chief judge of the circuit may request the Chief Justice of the United States to assign 1 or more district judges from another circuit to serve on a district court appellate panel, if the chief judge determines there is a need for such judges. The Chief Justice may thereupon designate and assign such judges for this purpose.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 28, United States Code, is amended by adding after the item relating to section 144 the following:

“145. District court appellate panels.”.

(c) MONITORING IMPLEMENTATION.—The Federal Judicial Center shall monitor the implementation of section 145 of title 28, United States Code (as added by this section) for 3 years following the date of enactment of this Act and report to the Judicial Conference such information as the Center determines relevant or that the Conference requests to enable the Conference to assess the effectiveness and efficiency of this section.

MESSAGES FROM THE HOUSE RECEIVED DURING ADJOURNMENT

Under the authority of the order of the Senate of January 6, 1999, the Secretary of the Senate, on January 20, during the adjournment of the Senate, received a message from the House of Representatives announcing that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 11. Concurrent resolution providing for an adjournment of the House.