

By Mr. LEAHY for the Committee on the Judiciary.

Norman Randy Smith, of Idaho, to be United States Circuit Judge for the Ninth Circuit.

Nora Barry Fischer, of Pennsylvania, to be United States District Judge for the Western District of Pennsylvania.

Marcia Morales Howard, of Florida, to be United States District Judge for the Middle District of Florida.

John Alfred Jarvey, of Iowa, to be United States District Judge for the Southern District of Iowa.

Sara Elizabeth Lioi, of Ohio, to be United States District Judge for the Northern District of Ohio.

\*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

### INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. ENSIGN (for himself, Ms. MURKOWSKI, Mr. STEVENS, Mr. CRAIG, Mr. CRAPO, Mr. INHOFE, and Mr. KYL):

S. 525. A bill to amend title 28, United States Code, to provide for the appointment of additional Federal circuit judges, to divide the Ninth Judicial Circuit of the United States into 2 circuits, and for other purposes; to the Committee on the Judiciary.

By Mr. PRYOR (for himself, Mr. CHAMBLISS, and Ms. MIKULSKI):

S. 526. A bill to amend title 38, United States Code, to expand the scope of programs of education for which accelerated payments of educational assistance under the Montgomery GI Bill may be used, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. FEINGOLD (for himself and Mr. KYL):

S. 527. A bill to make amendments to the Iran, North Korea, and Syria Nonproliferation Act; to the Committee on Foreign Relations.

By Mr. FEINGOLD:

S. 528. A bill to amend the Agricultural Adjustment Act to prohibit the Secretary of Agriculture from basing minimum prices for Class I milk on the distance or transportation costs from any location that is not within a marketing area, except under certain circumstances, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. FEINGOLD:

S. 529. A bill to allow the modified bloc voting by cooperative associations of milk producers in connection with a referendum on Federal Milk Marketing Order reform; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. FEINGOLD (for himself and Mr. SCHUMER):

S. 530. A bill to prohibit products that contain dry ultra-filtered milk products, milk protein concentrate, or casein from being labeled as domestic natural cheese, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. McCAIN:

S. 531. A bill to repeal section 10(f) of Public Law 93-531, commonly known as the

"Bennett Freeze"; to the Committee on Indian Affairs.

By Mr. HATCH:

S. 532. A bill to require the Secretary of the Interior to convey certain Bureau of Land Management land to Park City, Utah, and for other purposes; to the Committee on Energy and Natural Resources.

By Ms. MURKOWSKI:

S. 533. A bill to amend the National Aquaculture Act of 1980 to prohibit the issuance of permits for marine aquaculture facilities until requirements for the permits are enacted into law; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. BIDEN:

S. 534. A bill to bring the FBI to full strength to carry out its mission; to the Committee on the Judiciary.

By Mr. DODD (for himself and Mr. LEAHY):

S. 535. A bill to establish an Unsolved Crimes Section in the Civil Rights Division of the Department of Justice, and an Unsolved Civil Rights Crime Investigative Office in the Civil Rights Unit of the Federal Bureau of Investigation, and for other purposes; to the Committee on the Judiciary.

By Mr. KOHL (for himself and Mr. LEAHY):

S. 536. A bill to amend the Organic Foods Production Act of 1990 to prohibit the labeling of cloned livestock and products derived from cloned livestock as organic; to the Committee on Agriculture, Nutrition, and Forestry.

By Ms. LANDRIEU (for herself, Mr. LOTT, Mr. KERRY, and Mr. LIEBERMAN):

S. 537. A bill to address ongoing small business and homeowner needs in the Gulf Coast States impacted by Hurricane Katrina and Hurricane Rita; to the Committee on Small Business and Entrepreneurship.

By Ms. LANDRIEU:

S. 538. A bill to reduce income tax withholding deposits to reflect a FICA payroll tax credit for certain employers located in specified portions of the GO Zone, and for other purposes; to the Committee on Finance.

By Ms. LANDRIEU (for herself, Mr. LOTT, and Mr. KERRY):

S. 539. A bill to address ongoing economic injury in Gulf Coast States impacted by Hurricanes Katrina and Rita by reviving tourist travel to the region; to the Committee on Environment and Public Works.

By Mr. VITTER (for himself and Ms. LANDRIEU):

S. 540. A bill to require the Food and Drug Administration to permit the sale of baby turtles as pets so long as the seller uses proven methods to effectively treat salmonella; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. FEINGOLD:

S. 541. A bill to amend the farm Security and Rural Investment Act of 2002 to promote local and regional support for sustainable bioenergy and biobased products, to support the future of farming, forestry, and land management, to develop and support local bioenergy, biobased products, and food systems, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. CRAIG:

S. 542. A bill to authorize the Secretary of the Interior to conduct feasibility studies to address certain water shortages within the Snake, Boise, and Payette River systems in the State of Idaho, and for other purposes; to the Committee on Energy and Natural Resources.

### SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. FEINGOLD (for himself, Mr. SUNUNU, and Mr. LEVIN):

S. Res. 76. A resolution calling on the United States Government and the international community to promptly develop, fund, and implement a comprehensive regional strategy in Africa to protect civilians, facilitate humanitarian operations, contain and reduce violence, and contribute to conditions for sustainable peace in eastern Chad, and Central African Republic, and Darfur, Sudan; to the Committee on Foreign Relations.

### ADDITIONAL COSPONSORS

S. 65

At the request of Mr. INHOFE, the names of the Senator from Utah (Mr. HATCH), the Senator from Kansas (Mr. BROWNBACK), the Senator from Utah (Mr. BENNETT) and the Senator from Alaska (Ms. MURKOWSKI) were added as cosponsors of S. 65, a bill to modify the age-60 standard for certain pilots and for other purposes.

S. 93

At the request of Mr. STEVENS, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 93, a bill to authorize NTIA to borrow against anticipated receipts of the Digital Television and Public Safety Fund to initiate migration to a national IP-enabled emergency network capable of receiving and responding to all citizen activated emergency communications.

S. 368

At the request of Mr. BIDEN, the names of the Senator from Illinois (Mr. DURBIN), the Senator from Florida (Mr. NELSON), the Senator from Louisiana (Ms. LANDRIEU) and the Senator from Minnesota (Ms. KLOBUCHAR) were added as cosponsors of S. 368, a bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to enhance the COPS ON THE BEAT grant program, and for other purposes.

S. 388

At the request of Mr. THUNE, the name of the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 388, a bill to amend title 18, United States Code, to provide a national standard in accordance with which nonresidents of a State may carry concealed firearms in the State.

S. 430

At the request of Mr. BOND, the names of the Senator from Nebraska (Mr. HAGEL) and the Senator from New Hampshire (Mr. GREGG) were added as cosponsors of S. 430, a bill to amend title 10, United States Code, to enhance the national defense through empowerment of the Chief of the National Guard Bureau and the enhancement of the functions of the National Guard Bureau, and for other purposes.

S. 431

At the request of Mr. SCHUMER, the name of the Senator from Iowa (Mr.

GRASSLEY) was added as a cosponsor of S. 431, a bill to require convicted sex offenders to register online identifiers, and for other purposes.

S. 442

At the request of Mr. DURBIN, the names of the Senator from Delaware (Mr. BIDEN) and the Senator from Mississippi (Mr. COCHRAN) were added as cosponsors of S. 442, a bill to provide for loan repayment for prosecutors and public defenders.

S. 456

At the request of Mrs. FEINSTEIN, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 456, a bill to increase and enhance law enforcement resources committed to investigation and prosecution of violent gangs, to deter and punish violent gang crime, to protect law-abiding citizens and communities from violent criminals, to revise and enhance criminal penalties for violent crimes, to expand and improve gang prevention programs, and for other purposes.

S. 459

At the request of Ms. SNOWE, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 459, a bill to require that health plans provide coverage for a minimum hospital stay for mastectomies, lumpectomies, and lymph node dissection for the treatment of breast cancer and coverage for secondary consultations.

S. 465

At the request of Mr. NELSON of Florida, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 465, a bill to amend titles XVIII and XIX of the Social Security Act and title III of the Public Health Service Act to improve access to information about individuals' health care options and legal rights for care near the end of life, to promote advance care planning and decisionmaking so that individuals' wishes are known should they become unable to speak for themselves, to engage health care providers in disseminating information about and assisting in the preparation of advance directives, which include living wills and durable powers of attorney for health care, and for other purposes.

S. 486

At the request of Mr. KENNEDY, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 486, a bill to establish requirements for lenders and institutions of higher education in order to protect students and other borrowers receiving educational loans.

S. 511

At the request of Mrs. CLINTON, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 511, a bill to provide student borrowers with basic rights, including the right to timely information about their loans and the right to make fair and reasonable loan payments, and for other purposes.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ENSIGN (for himself, Ms. MURKOWSKI, Mr. STEVENS, Mr. CRAIG, Mr. CRAPO, Mr. INHOFE, and Mr. KYL):

S. 525. A bill to amend title 28, United States Code, to provide for the appointment of additional Federal circuit judges, to divide the Ninth Judicial Circuit of the United States into 2 circuits, and for other purposes; to the Committee on the Judiciary.

Ms. MURKOWSKI. Mr. President, I am pleased to be joined by my colleagues, Senators ENSIGN, STEVENS, KYL, CRAIG, CRAPO, and INHOFE, in introducing the Circuit Court of Appeals Restructuring and Modernization Act of 2007.

Our legislation will create a new Twelfth Circuit comprised of Alaska, Washington, Oregon, Idaho, Montana, Nevada and Arizona and will go far in improving the efficiency and effectiveness of the current Ninth Circuit U.S. Court of Appeals.

One need only look at the sheer geographic size of the Ninth Circuit to find reasons for reorganization. The Ninth Circuit extends from the Arctic Circle to the Mexican border, spans the tropics of Hawaii and crosses the International Dateline to Guam and the Northern Mariana Islands. Encompassing nine States and some 1.4 million square miles, the Ninth Circuit, by any means of measure, is the largest of all U.S. circuit courts of appeal. In fact, it is larger than the First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eleventh Circuits combined.

The Ninth Circuit serves a population of nearly 60 million, almost twice as many as the next largest Circuit. It contains the States that experience the fastest growth rate in the Nation. By 2010, the Census Bureau estimates that the Ninth Circuit's population will be more than 63 million—an increase which will inevitably create an even more daunting caseload.

The only factor more disturbing than the geographic magnitude of the circuit is the magnitude of its ever-expanding docket. The Ninth Circuit has more cases than any other circuit. Based on figures from March, 2006, the Ninth Circuit had 71 percent more cases than the next largest circuit—that is equivalent to the caseload of the Third, Seventh, Eighth and Tenth Circuits combined.

Moreover, because of the sheer magnitude of cases brought before the courts, citizens within the court's jurisdiction face intolerable delays in getting their cases heard. The median time to get a final disposition of an appellate case in the Ninth Circuit takes nearly 4 months longer than the national average. Former Chief Justice Warren E. Burger called the Ninth Circuit's docket an "unmanageable administrative monstrosity."

The massive size and daunting caseload of the Ninth Circuit result in a decrease in the ability of judges to keep

abreast of legal developments within the circuit. The large number of judges scattered over the 1.4 million square miles of the circuit inevitably results in difficulty in reaching consistent circuit decisions. This lack of judicial consistency discourages settlements and leads to unnecessary litigation. Reversal rates by the Supreme Court remain astonishingly high. In 2005, 87.5 percent of the Ninth Circuit cases brought before the Supreme Court were reversed or vacated. In 2006, 96 percent were reversed or vacated.

Another problem with the Ninth Circuit is that it is never able to speak with one voice. Because of its size, the Ninth Circuit is the only circuit where all judges do not sit en banc, or full court, review of panel decisions. Rather than splitting the Ninth Circuit at the time the Fifth Circuit was split, Congress decided to permit the Ninth Circuit to test a "limited" en banc procedure. The limited en banc allows a full court to be comprised of 11 members, rather than 28. Therefore, 6 members of the 28 are all that is necessary for a majority opinion.

Former Chief Justice Burger strongly opposed the limited en banc procedure:

Six judges can now bind more than 100 Article III and Article I judges, and this is simply contrary to how a court should function. I strongly believe the Ninth Circuit should be divided.

The legislation that I and my colleagues introduce today is the sensible reorganization of the Ninth Circuit. No one court can effectively exercise its power in an area that extends from the Arctic Circle to the tropics. Our legislation creates a circuit which is more geographically manageable, thereby significantly reducing wasted time and money spent on judicial travel.

Additionally, caseloads will be much more manageable. Whatever circuit that contains California will always be the giant of the circuits, but as you can see from this chart, caseloads before the new Ninth Circuit and the new Twelfth Circuit are much more in line with other circuits. Such reductions in caseload will clearly improve uniformity, consistency and dependency in legal decisions.

Additionally, this legislation is not novel. Since the day the circuit was established, over a century ago, there have been discussions to divide it. Over the last several decades, Congress has held hearings and debated a split and even mandated two congressional commissions to study the issue each of which recommended dividing the circuit. In fact, the scholarly White Commission, which reported to Congress in 1998, concluded that restructuring the Ninth Circuit would "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."

Furthermore, splitting a circuit to respond to caseload and population