A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. KIRK. Mr. Speaker, today, I missed 2 votes. Had I been present, I would have voted the following way:

Yes on rollcall Vote No. 490, On ordering the previous question providing for consideration of S. 878, to authorize an additional permanent judgeship in the district of Idaho, and for other purposes.

Yes on rollcall Vote No. 491, On agreeing to H. Res. 814, providing for consideration of S. 878, to authorize an additional permanent judgeship in the district of Idaho, and for other purposes.

Mr. MCGOVERN. Mr. Speaker, I was unavoidably detained for rollcall votes numbers 487, 488, 489, 490, and 491. If I was present, I would have voted:

''Aye'' on rollcall No. 487; ''aye'' on rollcall No. 488; ''aye'' on rollcall No. 489; ''nay'' on rollcall No. 490; and ''nay'' on rollcall No. 491.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Monahan, one of its clerks, announced that the Senate has passed with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 5122. An act to amend the Congressional Accountability Act of 1995 to permit members of the Board of Directors of the Office of Compliance to serve for 2 terms.

The message also announced that the Senate insists upon its amendment to the bill (H.R. 1047) ''An Act to amend the Harmonized Tariff Schedule of the United States to modify temporarily certain rates of duty, to make other technical amendments to the trade laws, and for other purposes,'' agrees to a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. GRASSLEY, Mr. FRIST, and Mr. BAUCUS, to be the conferees on the part of the Senate.

The message also announced that in accordance with the return of the papers to the Senate providing for technical corrections, said corrections having been made, the Secretary be directed to return to the House (H.R. 4567) ''An Act making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2005, and for other purposes.''

The message also announced that pursuant to section 104(c)(1) of Public Law 108–199, the Chair, on behalf of the Majority Leader and Democratic Leader of the Senate, and the Speaker of the House and Minority Leader of the House, announces the joint appointment of the following individual to serve as Chairman of the Commission on the Abraham Lincoln Study Abroad Fellowship Program:

Peter McPherson.

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on S. 878.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

CREATING ADDITIONAL FEDERAL COURT JUDGESHIPS

The SPEAKER pro tempore. Pursuant to House Resolution 814 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the Senate bill, S. 878.

□ 1120

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the Senate bill (S. 878) to authorize an additional permanent judgeship in the district of Idaho, and for other purposes, with Mr. LAHOOD in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from California (Mr. BERMAN) each will control 30 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

Mr. SENSENBRENNER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the Judicial Conference of the United States reviews the judgeship needs of United States courts every 2 years to determine if any of the courts need additional judges. The Conference completed its last review in March of 2003, and then submitted its recommendations to the House and Senate Committees on the Judiciary. I am pleased that the bill as reported by the Committee mirrors that recommendation. Thus, these are judgeships being created based upon demonstrated need and not upon politics.

The Judicial Conference bases its recommendations on a variety of factors that indicate the needs of various courts. Most importantly, it sets a benchmark caseload standard for considering judgeship requests at 430 weighted cases for individual judges on the district courts and 500 adjusted case filings for the three-judge panels on the courts of appeal. Aside from the numbers, it also considers additional criteria, including senior judge and magistrate judge assistance, geographical factors, unusual caseload complexity, and temporary caseload increases or decreases.

Based on these criteria, the Conference's current proposal recommends that Congress establish 11 new judgeships in four courts of appeal and 46 new judgeships in 24 district courts. The Conference also recommends that five temporary district court judgeships created in 1990 be established as permanent positions. Many of these needs have existed for many years.

The other body passed Senate 878 on May 22, 2003. The Senate bill created 12 permanent district judgeships, two temporary district judgeships, and a number of bankruptcy judgeships. This version of S. 878 also converted two temporary district judgeships to permanent status.

During our September 9 markup on the legislation, the Committee on the Judiciary revised the bill in two major ways.

First, we added all the circuit and district judgeships recommended by the U.S. Judicial Conference that were not included in the Senate bill. This brings the total number of new judgeships in the bill to 58, 11 circuit court seats and 47 district court seats. In addition, four other temporary district judgeships are converted to permanent judgeships.

The Subcommittee on Courts, the Internet, and Intellectual Property conducted an oversight hearing on Federal judgeship needs last year, and we are satisfied as a committee that the submissions developed by the Judicial Conference are meritorious. I emphasize that all the judgeships in the bill before the House could more than satisfy the threshold requirements developed by the Judicial Conference.

Second, all of the bankruptcy judgeships set forth in S. 878 as passed by the other body were stricken. These will be dealt with in the context of the bankruptcy reform legislation which the House has passed and which is currently pending before the other body.

Mr. Speaker, whatever our occasional differences with the third branch, it is our responsibility to ensure that our Federal courts have the resources necessary to allow citizens to seek legal redress in civil disputes and to permit the prosecution of criminal offenses when appropriate. This is a basic function of government.

I urge the Members to support the underlying text of S. 878, as well as the amendment that I will shortly offer to ensure that this bill does not run afoul of the Budget Act, based on the CBO score that accompanies this bill.

Mr. Chairman, I reserve the balance of my time.

Mr. BERMAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in conditional opposition to S. 878. The reason I would oppose this bill is if the amendment offered by the gentleman from Idaho is passed by this body.

I firmly believe we should pass a judgeship bill, and I supported it, Senate bill 878, as it was reported out by the House Committee on the Judiciary. The reported bill created all new Article 3 judgeships requested by the Administrative Office of the U.S. Courts. As a result, it would provide critical assistance to many Federal district

and appeals courts currently staggering under tremendous caseloads.

As reported, S. 878 is largely noncontroversial and enjoyed bipartisan support at the House Committee on the Judiciary markup. In fact, if S. 878 were brought up on the Suspension Calendar, as it should have been, I have no doubt it would have passed on a voice vote.

Since it is so noncontroversial, we might ask ourselves why the House's valuable time must be wasted debating S. 878 under a rule. Why are we not using this valuable time to deal with the more difficult appropriations or national security bills?

The answer is that a decision has been made to turn this noncontroversial bill into campaign season cannon fodder. This noncontroversial bill comes before us on a rule in order to provide an opportunity to debate an amendment soon to be offered by the gentleman from Idaho.

The tragedy is that this tactic may result in the adoption of a highly inadvisable amendment. An adoption of this amendment, which would split the Ninth Circuit Court of Appeals into three circuits, will signal the death knell for S. 878 in the Senate.

I will discuss my reasons for opposing that amendment in some detail when it is offered, but I can state at this time that if this amendment were to pass, it would be the first time in the history of our Federal judiciary that we have split a circuit against the will of the justices of that circuit.

If the amendment is adopted, S. 878 will die in the Senate. There is no question about that.

I might also point out that S. 878, as it passed out of committee, while noncontroversial, failed to include any of the new bankruptcy judges that are very important to deal with the tremendous caseload problems in our bankruptcy courts. The Committee on the Judiciary stripped out all of the bankruptcy judgeships because the majority thought that requiring the Senate to pass the bankruptcy reform bill, which also contains authorization for those same judgeships, might be leveraged in the process. I think that is a strategy that is destined to fail and it is a failure in S. 878, in that the judges so desperately needed on the bankruptcy court are not included in this bill.

Mr. Chairman, I reserve the balance of my time.

□ 1130

Mr. Chairman, I yield 3 minutes to the gentlewoman from California (Ms. LOFGREN), a member of the Subcommittee on Courts, the Internet, and Intellectual Property of the Committee on the Judiciary.

Ms. LOFGREN. Mr. Chairman, I rises today not only as a member of the Committee on the Judiciary but as chair of the California Democratic Delegation to say we need more judges, but we do not need to split the Ninth Circuit. It is important to know that California's Republican Governor, Arnold Schwarzenegger opposes the proposed split as does former Republican Governor Pete Wilson. Our two Democratic Senators, DIANNE FEINSTEIN and BARBARA BOXER, also oppose the split, and the American Bar Association and the California Academy of Appellate Lawyers also oppose the split. Even the judges of the Ninth Circuit oppose the split by a 30-to-9 margin.

According to the Administrative Office of the Courts, the start-up cost for such a split would be $131 million, and there would be an additional $21.7 million in extra personnel costs every year.

Why would we waste these millions? The Ninth Circuit is not broken. Although the Ninth Circuit contains the largest number of judges of any Federal circuit, the ratio of published opinions to the number of judgeships is well within what is applicable to other circuits. It is also worth noting that the circuit judges in the Ninth Circuit take only 1.4 months to decide cases following argument, while the national average is 2.1 months.

Despite all the rhetoric, the Ninth Circuit's reversal rates compare favorably with every other circuit. So I would urge my colleagues to oppose and vote down the amendment to split the circuit. We do need these judges. But join the Republican governor and the judges and the taxpayers, who do not want to fund this waste, in turning down this ill-conceived amendment to split the Ninth Circuit so that we can move forward and get those judges that we need.

Mr. BERMAN. Mr. Chairman, I yield 4 minutes to the gentleman from California (Mr. SCHIFF), a member of the Committee on the Judiciary.

Mr. SCHIFF. Mr. Chairman, I thank the gentleman for yielding me time.

I rise with the same conditional support of S. 878 as my colleague from California (Mr. BERMAN). The base bill responds to a crisis of judicial vacancies in our country by authorizing a number of much-needed judgeships.

Since arriving at Congress, I have been very surprised by the poor state of relations between our branches and the absence of comity that has existed between the Congress and the courts. The Federal caseload continues to increase at a record pace, reaching record levels. Courthouse funding is woefully inadequate, failing to meet the needs of Federal courts in order to carry out their critical mission and to make necessary improvements in priority areas such as courthouse security.

Judicial confirmations continue to be mired in political brinksmanship and judicial compensation has not kept pace with inflation. What is more, the Congress has now resorted to a more proactive attack on the judicial branch which we have seen on the floor of this body most recently in the form of court-stripping proposals.

Today's action on this legislation, barring the Simpson amendment, is a welcome and long overdue step in recognizing our responsibility in Congress to support the judiciary. But I am gravely concerned about the potential of the Simpson amendment. It seems to fly directly in the face of the White Commission's report analyzing when circuits should be split and when they should not. The White Commission reported in 1998: ''There is one principle that we regard as undebatable. It is wrong to realign circuits or not to realign them and to restructure courts or to leave them alone because of particular judicial decisions or particular judges. This rule must be faithfully honored for the independence of the judiciary is of constitutional dimension and requires no less.''

The Judicial Conference of the United States periodically completes a review of judgeship needs. As a result of rapid increase in the caseloads of our courts, the conference recommended that Congress establish 11 new judgeships and four courts of appeals and 46 new judgeships and 26 district courts. It also recommended five temporary judgeships become permanent.

The base bill is an important step in fulfilling that goal, and the House bill authorizes more than 50 new judgeships across the United States. However, if this bill becomes bogged down in an amendment which would only continue the assault on the judiciary, contravene the will of the judges of the circuit itself, it will be a step in the wrong direction. Circuit division would eliminate a number of important advantages that come from a large circuit. It would eliminate the ability to transfer judges from one district to another within the same circuit to deal with fluctuating caseloads. It would reduce the number of circuit judges available to decide the cases from the growing border of districts from Arizona and southern California.

For these reasons, division of the circuit is strongly opposed by a bipartisan coalition of judges and officials. The judges of the Ninth Circuit have voted overwhelmingly 30 to 9 against division. In addition, California Governor Arnold Schwarzenegger strongly opposes any effort to break up the circuit.

What is more, as the White Commission wrote, ''there is no persuasive evidence that the Ninth Circuit or any other circuit for that matter is not working effectively or that creating new circuits will improve the administration of justice in any circuit or overall. Furthermore, splitting the circuit would impose substantial costs of administrative disruption, not to mention the monetary costs of creating a new circuit. Accordingly, we do not recommend to Congress and the President that they consider legislation to split the circuit.''

Are we going to take a bill that was one of the few positive lights in the relationship between the Congress and the courts and turn it into yet another assault on the wishes and the needs of the judiciary?

To quote the White Report again, ''Maintaining the Court of Appeals for the Ninth Circuit as currently aligned respects the character of the west as a distinct region.''

Mr. Chairman, I urge support for the base bill and rejection of the Simpson amendment.

Mr. SENSENBRENNER. Mr. Chairman, I yield 2 minutes to the gentleman from New Mexico (Mr. PEARCE).

Mr. PEARCE. Mr. Chairman, I rise today in support of Senate S. 878 which authorizes the creation of certain new U.S. circuit and district judgeships as well as converts temporary judgeships to permanent status.

Mr. Chairman, I would like to thank the gentleman from Wisconsin (Mr. SENSENBRENNER) and his staff for their leadership in addressing the urgency for additional Federal district judgeships in the United States District Court of New Mexico, especially in Las Cruces, New Mexico. This desperate judicial situation in the southern New Mexico district is manifest in crushing caseloads, unique geographical factors, and the exhaustion of judicial resources. Data indicates that the district has the fourth highest total criminal caseload per judgeship in the Nation with 739 weighted cases per judgeship. This is 46 percent higher than the national average and a 150 percent increase from 1996.

This extraordinary caseload is primarily attributed to the geographical factors unique to the district. Immigration and narcotics cases are almost exclusively driving the increase, placing an extraordinary burden on the Las Cruces Federal Courthouse, which is just 50 miles away from the U.S.-Mexico border. The district has begun to exhaust all judicial resources. One option to handle the enormous caseload in Las Cruces is assigning rotating duties to district judges from Albuquerque and Santa Fe, requiring judges and their staffs to travel more than 450 miles roundtrip during the week. Many of the judges are even called in from other jurisdictions.

U.S. district judges from Vermont to Kansas have presided in Las Cruces regularly and conclude that they have never seen a caseload as high as in the entire time they have been on the bench. One judge commented that, in 28 days, he handled more capital cases in 28 days than he did during an entire year in Vermont.

The desperately needed judges provided for in this legislation will decrease the weighted filings by half, bringing the district on parity with the rest of the districts in the United States.

Again, I thank the gentleman from Wisconsin (Mr. SENSENBRENNER) for his fine leadership on this legislation and urge passage of S. 878.

Mr. BERMAN. Mr. Chairman, I yield 3 minutes to the gentlewoman from California (Ms. WOOLSEY).

Ms. WOOLSEY. Mr. Chairman, I thank the gentleman from California (Mr. BERMAN) for yielding me time.

Mr. Chairman, I am tired of my Republican colleagues using the term ''activist judges'' to scare citizens into believing our Federal judiciary has lost all credibility and seeks only to promote an activist liberal agenda, and I am taking this time today to tell you why.

This is plainly not the truth. It is wrong, and it is illogical. In fact, was not it activist unelected judges who appointed the current President of the United States of America? The only threat these judges, most of whom were appointed by Republican Presidents, present is shutting down the Republicans ultra-conservative agenda and actually proving that many of the policies Republicans promote are unconstitutional or discriminating.

Let us take the controversial Ninth Circuit Court as an example. Twenty-six judges sit on this court. My Republican colleagues talk as if all of these judges are out to destroy the morals of this country, that these judges will destroy the fabric of our families and sensor religious practices perhaps because our colleagues on the other side of the aisle believe that these judges do not believe in fundamental Christian values. But at least half of these judges have conservative leanings. And I ask, is 50 percent not enough?

My Republican colleagues also like to insinuate the Democrats have appointed most of the active judges in our courts today. But they are mistaken. Since President Jimmy Carter was in office, Democrats have appointed 634 judges. Republicans have appointed 735 judges. It seems to me that Republicans know their policies are so radical that they will not stand up in court, and the only way to ensure their policies will stay on the books is to wipe out our jurisdiction system and erase our systems of checks and balances.

Republicans are destroying the courts, undermining judges' decisions, bullying those who stand by the Constitution. Do not let them tell you they are fighting activist judges. They are just carrying out their paranoid control. Mr. Chairman, if the judges in this country were so biased, so against conservative values, how did our current President get appointed in the year 2000? Those judges did not seem too activist to Republicans at that time, did they?

Mr. UDALL of Colorado. Mr. Chairman, I will vote against this amendment because I am concerned that whatever benefits it might have are outweighed by the costs to the taxpayers that it would entail.

The current jurisdiction of the Ninth Circuit is certainly extensive—from Alaska to Hawaii, Guam, and the Commonwealth of the Northern Marianas and including California, Nevada, Arizona, Idaho, Montana, Nevada, Oregon, and Washington.

The populations of several of these states have increased considerably in recent years, and it can be anticipated that the caseloads of the Ninth Circuit will continue to increase accordingly. So, there might be something to be said for realigning the judicial districts now included in the Ninth Circuit.

However, I do not think that it is appropriate for the House of Representatives to make such an important decision on the basis of the very brief consideration that we are being permitted today.

And I certainly think that before making such a serious decision, we should consider how it would affect the ability of the federal courts to do their job.

Regarding that aspect of the matter, I think we should all pay careful heed to the analysis of the Administrative Office of the United States Courts contained in a May 14th letter from its Director, Leonidas Ralph Meacham, to Senator FEINSTEIN.

Discussing proposals to divide the Ninth Circuit in ways similar to that proposed in this amendment, Mr. Meacham wrote ''The judiciary is not in a position to absorb any of the additional costs'' that would result. He goes on to say that dividing the Ninth Circuit into three circuits—which is what this amendment would do—''would likely require one-time start-up funding ranging from $16.7 million to $18.9 million for space alterations, information technology and telecommunications infrastructure, furniture, and law books. In addition, a new courthouse would have to be built'' (and another modernized) that would cost millions more. Also, according to Mr. Meacham, ''The judiciary would also require an additional $21.7 million annually in recurring personnel and operating expenses.''

At a time when our courts are already hard-pressed for funding and the overall federal budget is drowning in red ink, I think we should not lightly incur such additional costs—and certainly not on the basis of a mere 40 minutes of debate on this amendment.

Instead, any measure to realign the Ninth Circuit—or any other part of the federal courts, for that matter—should be carefully reviewed in committee and then considered by the House of Representatives under procedures that allow full consideration of its potential benefits and the costs that would be involved.

If such a measure is considered under those considerations, I will review it carefully and will support it if I am convinced that it deserves approval. However, I have not reached that conclusion about this amendment and so I will vote against it.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I rise in partial support of the bill before the Committee of the Whole, S. 878, authorizing the addition of permanent judgeships in the District of Idaho and for other purposes. As introduced, the bill only authorized the President to appoint a new U.S. district judge for the District of Idaho. Substitutes adopted by the Senate Judiciary Committee (on May 20, 2003) and the full Senate (two days later) added another 15 district judgeships (permanent, temporary, or temporary converted to permanent), along with 29 permanent and seven converted (temporary-to-permanent) bankruptcy judgeships.

The rule reports out of the Committee on Rules, H. Res. 814, severely hindered the ability of Members to improve this legislation by ruling only two—Republican—amendemtns in order. The amendment offered by the Chairman of the Judiciary Committee that would stagger the implementation of this legislation to accommodate budgetary needs.

On the other hand, the amendment offered by the gentleman from Idaho threatens to

water down the 9th Circuit and effectively strip the existing courts of their ability to take up cases. This effect would be consistent with the line of court-stripping legislation that has passed in this House recently—the Pledge Protection Act; the Federal Marriage Amendment; the Marriage Protection Act.

The amendment that was offered by the Distinguished Ranking Member of the Judiciary Committee that would call for increases in the pay that federal circuit judges receive should have been ruled in order.

We must protect the power and discretion of the Courts and we must preserve the sanctity of the U.S. Constitution. The way that we legislate to change the makeup of the federal circuit courts will have a tremendous effect on the development of jurisprudence.

The Subcommittee on Courts, the Internet, and Intellectual Property conducted an oversight hearing regarding federal judgeship needs on June 24, 2003. The Subcommittee reviewed the original request for additional circuit and district judgeships developed by the U.S. Judicial Conference and the methodology adopted to justify the submission.

The Judicial Conference of the United States (Conference) reviews biannually the judgeship needs of all U.S. courts of appeal and U.S. district courts to determine if any of the courts require additional judges to administer civil and criminal justice in the federal court system. The Conference then submits its recommendations to the House and Senate Committees on the Judiciary. The Conference completed its last review in March, 2003, and submitted its recommendations to Congress.

The Conference set a benchmark caseload standard for considering judgeship requests at 430 weighted cases per judgeship for district courts and 500 adjusted case filings per panel for courts of appeal. The Conference process takes into account additional criteria that may influence the judgeship needs of each court, including senior judge and magistrate judge assistance, geographical factors, unusual caseload complexity, and temporary caseload increases or decreases.

Therefore, I support this legislation only insofar as it aids in the administration of justice; however, I reserve my opposition to the negative effects that I can have on the discretion that federal judges have.

Mr. SMITH of Texas. Mr. Chairman, the Chairman did a good job of summarizing S. 878 so I will not repeat his description of the bill.

I would emphasize that during my Subcommittee's oversight hearing on judgeship needs last year we received testimony from the Judicial Conference and others that supported the requests that are a part of this package.

The need to create new circuit and district judgeships is real and speaks to our obligation to assist a coequal branch of government in discharging its duties on behalf of the American people.

I urge Members to support the bill and the Sensenbrenner amendment that will cure a scoring problem with consideration of S. 878.

Mr. THOMAS. Mr. Chairman, I rise today in support of S. 878, which would make important upgrades to the Federal judiciary's infrastructure. I appreciate the leadership Chairman SENSENBRENNER has exhibited in the development of this legislation, which would establish 58 new Federal judgeships.

As reported by the House Committee on the Judiciary, S. 878 would provide 47 new Federal district court judgeships. Significantly, S. 878 reflects legislation (H.R. 3486) that I introduced earlier this year in that S. 878 would convert the expired temporary judgeship in the U.S. District Court for the Eastern District of California temporary judgeship to a permanent judgeship and add three additional permanent judgeships.

These additional four judgeships are much-needed as the seven judges in the Eastern District are currently carrying an average weighted caseload of 788 each, far in excess of the 430 benchmark used by the U.S. Judicial Conference to determine when additional permanent judgeships are required. Moreover, it must be noted that the judges of the Eastern District have exceeded that benchmark since 1998, when their average weighted caseload was 567. The judges of the Eastern District also have an average of 920 pending cases each, an increase of 25 percent since 1998.

In addition, the Eastern District continues to see an annual increase in total filings; in 2003, 5,853 cases were filed in the Eastern District, which is an increase of 1,139 cases from the 4,714 cases filed in 1998. As one would expect, the number of pending cases in the Eastern District has likewise increased; in 2003, there were 6,440 cases pending, which is an increase of 1,269 since 1998.

Accordingly, I encourage my colleagues to continue to work to quickly enact legislation to provide the Federal judiciary, and especially the Eastern District of California, with the resources necessary to efficiently and effectively administer justice.

Mr. BERMAN. Mr. Chairman, we have no further requests for time, and I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the committee amendment in the nature of a substitute printed in the bill shall be considered as an original bill for the purpose of amendment under the 5-minute rule and shall be considered read.

The text of the committee amendment in the nature of a substitute is as follows:

S. 878

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

SECTION 1. NEW DISTRICT JUDGESHIPS.

The President shall appoint, by and with the advice and consent of the Senate, the following:

(1) 1 additional district judge for the northern district of Alabama.

(2) 1 additional district judge for the middle district of Alabama.

(3) 3 additional district judges for the district of Arizona.

(4) 1 additional district judge for the northern district of California.

(5) 3 additional district judges for the eastern district of California.

(6) 1 additional district judge for the central district of California.

(7) 2 additional district judges for the southern district of California.

(8) 2 additional district judges for the middle district of Florida.

(9) 4 additional district judges for the southern district of Florida.

(10) 1 additional district judge for the district of Idaho.

(11) 1 additional district judge for the western district of Missouri.

(12) 1 additional district judge for the district of Nebraska.

(13) 2 additional district judges for the district of New Mexico.

(14) 3 additional district judges for the eastern district of New York.

(15) 1 additional district judge for the district of Oregon.

(16) 1 additional district judge for the district of South Carolina.

(17) 2 additional district judges for the eastern district of Virginia.

(18) 1 additional district judge for the district of Utah.

(19) 1 additional district judge for the western district of Washington.

SEC. 2. CONVERSION OF TEMPORARY TO PERMANENT JUDGESHIPS.

The existing judgeships for the eastern district of California, the district of Hawaii, the district of Kansas, the eastern district of Missouri, that were authorized by section 203(c) of the Judicial Improvements Act of 1990 (28 U.S.C. 133 note; Public Law 101–650) shall, as of the date of the enactment of this Act, be authorized under section 133 of title 28, United States Code, and the incumbents in those offices shall, as of such date of enactment, hold those offices under section 133 of title 28, United States Code, as amended by this Act.

SEC. 3. TEMPORARY JUDGESHIPS.

(a) APPOINTMENT.—The President shall appoint, by and with the advice and consent of the Senate, the following:

(1) 1 additional district judge for the northern district of California.

(2) 2 additional district judges for the central district of California.

(3) 3 additional district judges for the southern district of California.

(4) 1 additional district judge for the district of Colorado.

(5) 1 additional district judge for the middle district of Florida.

(6) 1 additional district judge for the northern district of Illinois.

(7) 1 additional district judge for the northern district of Indiana.

(8) 1 additional district judge for the southern district of Indiana.

(9) 1 additional district judge for the northern district of Iowa.

(10) 1 additional district judge for the district of New Mexico.

(11) 1 additional district judge for the eastern district of New York.

(12) 1 additional district judge for the western district of New York.

(b) VACANCIES NOT FILLED.—(1) The first 2 vacancies in the office of district judge in the central district of California, occurring 10 years or more after judges are first confirmed to fill both temporary judgeships created in that district by subsection (a), shall not be filled.

(2) The first 3 vacancies in the office of district judge in the southern district of California, occurring 10 years or more after judges are first confirmed to fill all 3 temporary judgeships created in that district by subsection (a), shall not be filled.

(3) The first vacancy in the office of district judge in each district named in subsection (a), other than the central or southern district of California, occurring 10 years or more after judges are first confirmed to fill the temporary judgeship created in that district by subsection (a), shall not be filled.

SEC. 4. CONFORMING AMENDMENTS.

The table contained in section 133(a) of title 28, United States Code, is amended—

(1) by amending the item relating to Alabama to read as follows:

''Alabama:

Northern 8
Middle 4
Southern ..... 3'';

(2) by amending the item relating to Arizona to read as follows:

''Arizona ..... 15'';

(3) by amending the item relating to California to read as follows:

''California:
Northern 15
Eastern 10
Central 28
Southern ..... 15'';

(4) by amending the item relating to Florida to read as follows:

''Florida:
Northern 4
Middle 17
Southern ..... 21'';

(5) by amending the item relating to Hawaii to read as follows:

''Hawaii ..... 4'';

(6) by amending the item relating to Idaho to read as follows:

''Idaho ..... 3'';

(7) by amending the item relating to Kansas to read as follows:

''Kansas ..... 6'';

(8) by amending the item relating to Missouri to read as follows:

''Missouri:
Eastern 7
Western 5
Eastern and Western ..... 2'';

(9) by amending the item relating to Nebraska to read as follows:

''Nebraska ..... 4'';

(10) by amending the item relating to New Mexico to read as follows:

''New Mexico ..... 8'';

(11) by amending the item relating to New York to read as follows:

''New York:
Northern 5
Southern 28
Eastern 18
Western ..... 4'';

(12) by amending the item relating to Oregon to read as follows:

''Oregon ..... 7'';

(13) by amending the item relating to South Carolina to read as follows:

''South Carolina ..... 11'';

(14) by amending the item relating to Utah to read as follows:

''Utah ..... 6'';

(15) by amending the item relating to Virginia to read as follows:

''Virginia:
Eastern 13
Western ..... 4'';

and

(16) by amending the item relating to Washington to read as follows:

''Washington:
Eastern 4
Western ..... 8''.

SEC. 5. ADDITIONAL CIRCUIT JUDGES.

(a) PERMANENT JUDGESHIPS.—The President shall appoint, by and with the advice and consent of the Senate, 1 additional circuit judge for the first circuit court of appeals, 2 additional circuit judges for the second circuit court of appeals, 1 additional circuit judge for the sixth circuit court of appeals, and 5 additional circuit judges for the ninth circuit court of appeals.

(b) TEMPORARY JUDGESHIPS.—

(1) APPOINTMENT OF JUDGES.—The President shall appoint, by and with the advice and consent of the Senate, 2 additional circuit judges for the ninth circuit court of appeals.

(2) EFFECT OF VACANCIES.—The first 2 vacancies occurring on the ninth circuit court of appeals 10 years or more after judges are first confirmed to fill both temporary circuit judgeships created by this subsection shall not be filled.

(c) NUMBER OF CIRCUIT JUDGES.—The table contained in section 44(a) of title 28, United States Code, is amended—

(1) by amending the item relating to the first circuit to read as follows:

''First ..... 7'';

(2) by amending the item relating to the second circuit to read as follows:

''Second ..... 15'';

(3) by amending the item relating to the sixth circuit to read as follows:

''Sixth ..... 17'';

and

(4) by amending the item relating to the ninth circuit to read as follows:

''Ninth ..... 33''.

The CHAIRMAN. No amendment to the committee amendment is in order except those printed in House Report 108–723. Each amendment may be offered only in the order printed in the report, by a member designated in the report, shall be considered read, shall be debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

It is now in order to consider amendment No. 1 printed in House Report 108–723.

AMENDMENT NO. 1 OFFERED BY MR. SENSENBRENNER

Mr. SENSENBRENNER. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. SENSENBRENNER:

Strike sections 1 through 4 and insert the following:

SECTION 1. NEW DISTRICT JUDGESHIPS.

The President shall appoint, by and with the advice and consent of the Senate, the following:

(1) 1 additional district judge for the northern district of Alabama, who shall be appointed no earlier than October 1, 2006.

(2) 1 additional district judge for the middle district of Alabama, who shall be appointed no earlier than October 1, 2008.

(3) 3 additional district judges for the district of Arizona, who shall be appointed no earlier than October 1, 2007.

(4) 1 additional district judge for the northern district of California, who shall be appointed no earlier than October 1, 2006.

(5) 3 additional district judges for the eastern district of California, who shall be appointed no earlier than October 1, 2006.

(6) 1 additional district judge for the central district of California, who shall be appointed no earlier than October 1, 2005.

(7) 2 additional district judges for the southern district of California, who shall be appointed no earlier than October 1, 2005.

(8) 2 additional district judges for the middle district of Florida, who shall be appointed no earlier than October 1, 2007.

(9) 4 additional district judges for the southern district of Florida, who shall be appointed no earlier than October 1, 2005.

(10) 1 additional district judge for the district of Idaho, who shall be appointed no earlier than October 1, 2008.

(11) 1 additional district judge for the western district of Missouri, who shall be appointed no earlier than October 1, 2008.

(12) 1 additional district judge for the district of Nebraska, who shall be appointed no earlier than October 1, 2006.

(13) 2 additional district judges for the district of New Mexico, one of whom shall be appointed no earlier than October 1, 2005, and one of whom shall be appointed no earlier than October 1, 2008.

(14) 3 additional district judges for the eastern district of New York, who shall be appointed no earlier than October 1, 2007.

(15) 1 additional district judge for the district of Oregon, who shall be appointed no earlier than October 1, 2010.

(16) 1 additional district judge for the district of South Carolina, who shall be appointed no earlier than October 1, 2008.

(17) 1 additional district judge for the district of Utah, who shall be appointed no earlier than October 1, 2008.

(18) 2 additional district judges for the eastern district of Virginia, who shall be appointed no earlier than October 1, 2006.

(19) 1 additional district judge for the western district of Washington, who shall be appointed no earlier than October 1, 2009.

SEC. 2. CONVERSION OF TEMPORARY TO PERMANENT JUDGESHIPS.

The existing judgeships for the eastern district of California, the district of Hawaii, the district of Kansas, and the eastern district of Missouri, that were authorized by section 203(c) of the Judicial Improvements Act of 1990 (28 U.S.C. 133 note; Public Law 101–650) shall, as of the date of the enactment of this Act, be authorized under section 133 of title 28, United States Code, and the incumbents in those offices shall, as of such date of enactment, hold those offices under section 133 of title 28, United States Code, as amended by this Act.

SEC. 3. TEMPORARY JUDGESHIPS.

(a) APPOINTMENT.—The President shall appoint, by and with the advice and consent of the Senate, the following:

(1) 1 additional district judge for the northern district of California, who shall be appointed no earlier than October 1, 2010.

(2) 2 additional district judges for the central district of California, who shall be appointed no earlier than October 1, 2010.

(3) 3 additional district judges for the southern district of California, who shall be appointed no earlier than October 1, 2009.

(4) 1 additional district judge for the district of Colorado, who shall be appointed no earlier than October 1, 2009.

(5) 1 additional district judge for the middle district of Florida, who shall be appointed no earlier than October 1, 2010.

(6) 1 additional district judge for the northern district of Illinois, who shall be appointed no earlier than October 1, 2009.

(7) 1 additional district judge for the northern district of Indiana, who shall be appointed no earlier than October 1, 2009.

(8) 1 additional district judge for the southern district of Indiana, who shall be appointed no earlier than October 1, 2010.

(9) 1 additional district judge for the northern district of Iowa, who shall be appointed no earlier than October 1, 2010.

(10) 1 additional district judge for the district of New Mexico, who shall be appointed no earlier than October 1, 2008.

(11) 1 additional district judge for the eastern district of New York, who shall be appointed no earlier than October 1, 2009.

(12) 1 additional district judge for the western district of New York, who shall be appointed no earlier than October 1, 2008.

(b) VACANCIES NOT FILLED.—(1) The first 2 vacancies in the office of district judge in the central district of California, occurring

10 years or more after judges are first confirmed to fill both temporary judgeships created in that district by subsection (a), shall not be filled.

(2) The first 3 vacancies in the office of district judge in the southern district of California, occurring 10 years or more after judges are first confirmed to fill all 3 temporary judgeships created in that district by subsection (a), shall not be filled.

(3) The first vacancy in the office of district judge in each district named in subsection (a), other than the central or southern district of California, occurring 10 years or more after judges are first confirmed to fill the temporary judgeship created in that district by subsection (a), shall not be filled.

SEC. 4. CONFORMING AMENDMENTS.

(a) AMENDMENTS.—The table contained in section 133(a) of title 28, United States Code, is amended—

(1) by amending the item relating to Alabama to read as follows:

''Alabama:
Northern 8
Middle 4
Southern ..... 3'';

(2) by amending the item relating to Arizona to read as follows:

''Arizona ..... 15'';

(3) by amending the item relating to California to read as follows:

''California:
Northern 15
Eastern 10
Central 28
Southern ..... 15'';

(4) by amending the item relating to Florida to read as follows:

''Florida:
Northern 4
Middle 17
Southern ..... 21'';

(5) by amending the item relating to Hawaii to read as follows:

''Hawaii ..... 4'';

(6) by amending the item relating to Idaho to read as follows:

''Idaho ..... 3'';

(7) by amending the item relating to Kansas to read as follows:

''Kansas ..... 6'';

(8) by amending the item relating to Missouri to read as follows:

''Missouri:
Eastern 7
Western 6
Eastern and Western ..... 2'';

(9) by amending the item relating to Nebraska to read as follows:

''Nebraska ..... 4'';

(10) by amending the item relating to New Mexico to read as follows:

''New Mexico ..... 8'';

(11) by amending the item relating to New York to read as follows:

''New York:
Northern 5
Southern 28
Eastern 18
Western ..... 4'';

(12) by amending the item relating to Oregon to read as follows:

''Oregon ..... 7'';

(13) by amending the item relating to South Carolina to read as follows:

''South Carolina ..... 11'';

(14) by amending the item relating to Utah to read as follows:

''Utah ..... 6'';

(15) by amending the item relating to Virginia to read as follows:

''Virginia:
Eastern 13
Western ..... 4''; and

(16) by amending the item relating to Washington to read as follows:

''Washington:
Eastern 4
Western ..... 8''.

(b) CONSTRUCTION.—The amendments made by subsection (a) shall not be construed to authorize the appointment of any judge on a date earlier than that authorized for that judge under section 1.

The CHAIRMAN. Pursuant to House Resolution 814, the gentleman from Wisconsin (Mr. SENSENBRENNER) and a Member opposed each will control 5 minutes.

The gentleman from Wisconsin (Mr. SENSENBRENNER) is recognized.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I regret that I must offer this amendment to S. 878, but its passage will avoid a problem highlighted by the Congressional Budget Office and its cost estimate for the bill.

Budget rules require us to stay within a 1-year and 5-year budget authority score for direct spending. The bill as reported by the Committee on the Judiciary comports with the 1-year spending threshold imposed by the budget rule. Unfortunately, however, the 5-year score exceeds the corresponding threshold by roughly $5.5 million.

To cure this defect, I was faced with choosing either deleting meritorious circuit and district judgeships from the bill or retaining all of the judgeships while staggering their implementation over a longer period of time. I have chosen the latter option as the better of the two, and this amendment reflects that.

While some judicial districts will have to wait longer for additional judges under this plan, at least those judges will have been authorized for the relatively near future.

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Assuming S. 878 is enacted, it will also be possible for a future Congress, perhaps the 109th, to provide the additional funding necessary to change the statute and accelerate the implementation dates for those judgeships that cannot be created prior to fiscal year 2005.

That said, my amendment would implement 11 circuit judgeships and convert the four temporary district judgeships to permanent seats in fiscal year 2005. Existing temporary seats do not score at all, and the related costs of the 11 circuit judgeships easily comply with the first-year threshold requirement.

For the next 5 fiscal years, through fiscal year 2010, the figure staggers the implementation of the remaining district judgeships at the rate of eight per year. In other words, eight new district judgeships are added in fiscal 2006, eight more in fiscal 2007, and so on through 2010. In the last year, fiscal year 2011, the remaining seven district judgeships are officially authorized.

I am sure that each of us could develop a different priority list detailing which judgeships would be implemented in a given fiscal year. I have tried to be fair by arranging the list based on need as defined by the Judicial Conference criteria.

We have received an informal assurance from CBO that this amendment will lower the 5-year budget authority estimate for direct spending below the $34.5 million requirement imposed on the Committee on the Judiciary. My staff has also worked closely with the Committee on the Budget on this matter, and I understand this amendment will satisfy their concerns. I appreciate their contributions to this effort.

In conclusion, I urge the Members to adopt this amendment, a necessary change that will bring us closer to authorizing the first omnibus judgeship bill since 1990.

Mr. BERMAN. Mr. Chairman, will the gentleman yield?

Mr. SENSENBRENNER. I yield to the gentleman from California.

Mr. BERMAN. Mr. Chairman, I thank the gentleman and I support the gentleman's amendment, but I am curious why an amendment that is being offered in order to avoid a Budget Act problem requires a waiver of the Budget Act.

Mr. SENSENBRENNER. Reclaiming my time, I do not know.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. Does anyone claim time in opposition?

Mr. BERMAN. Mr. Chairman, I stand up in opposition simply to state my support for the gentleman's amendment and urge its adoption.

Mr. SENSENBRENNER. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Wisconsin (Mr. SENSENBRENNER).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 2 printed in House Report 108–723.

AMENDMENT NO. 2 OFFERED BY MR. SIMPSON

Mr. SIMPSON. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Mr. SIMPSON:
Insert after section 5 the following new section:

SEC. 6. NINTH CIRCUIT REORGANIZATION.

(a) SHORT TITLE.—This section may be cited as the ''Ninth Circuit Judgeship and Reorganization Act of 2004''.

(b) DEFINITIONS.—In this section:

(1) FORMER NINTH CIRCUIT.—The term ''former ninth circuit'' means the ninth judicial circuit of the United States as in existence on the day before the effective date of this section.

(2) NEW NINTH CIRCUIT.—The term ''new ninth circuit'' means the ninth judicial circuit of the United States established by the amendment made by subsection (c)(2)(A).

(3) TWELFTH CIRCUIT.—The term ''twelfth circuit'' means the twelfth judicial circuit of the United States established by the amendment made by subsection (c)(2)(B).

(4) THIRTEENTH CIRCUIT.—The term ''thirteenth circuit'' means the thirteenth judicial circuit of the United States established by the amendment made by subsection (c)(2)(B).

(c) NUMBER AND COMPOSITION OF CIRCUITS.—Section 41 of title 28, United States Code, is amended—

(1) in the matter preceding the table, by striking ''thirteen'' and inserting ''fifteen''; and

(2) in the table—

(A) by striking the item relating to the ninth circuit and inserting the following:

''Ninth	California, Guam, Hawaii, Northern Marianas Islands.'';

and

(B) by inserting after the item relating to the eleventh circuit the following:

''Twelfth	Arizona, Nevada, Idaho, Montana.
''Thirteenth	Alaska, Oregon, Washington.''.

(d) PLACES OF CIRCUIT COURT.—The table contained in section 48(a) of title 28, United States Code, is amended—

(1) by striking the item relating to the ninth circuit and inserting the following:

''Ninth	San Francisco, Los Angeles.'';

and

(2) by inserting after the item relating to the eleventh circuit the following:

''Twelfth	Las Vegas, Phoenix.
''Thirteen	Portland, Seattle.

(e) ASSIGNMENT OF CIRCUIT JUDGES.—Each circuit judge of the former ninth circuit who is in regular active service and whose official duty station on the day before the effective date of this section—

(1) is in California, Guam, Hawaii, or the Northern Marianas Islands shall be a circuit judge of the new ninth circuit as of such effective date;

(2) is in Arizona, Nevada, Idaho, or Montana shall be a circuit judge of the twelfth circuit as of such effective date; and

(3) is in Alaska, Oregon, or Washington shall be a circuit judge of the thirteenth circuit as of such effective date.

(f) ELECTION OF ASSIGNMENT BY SENIOR JUDGES.—Each judge who is a senior circuit judge of the former ninth circuit on the day before the effective date of this section may elect to be assigned to the new ninth circuit, the twelfth circuit, or the thirteenth circuit as of such effective date, and shall notify the Director of the Administrative Office of the United States Courts of such election.

(g) SENIORITY OF JUDGES.—The seniority of each judge—

(1) who is assigned under subsection (e), or

(2) who elects to be assigned under subsection (f),

shall run from the date of commission of such judge as a judge of the former ninth circuit.

(h) APPLICATION TO CASES.—The following apply to any case in which, on the day before the effective date of this section, an appeal or other proceeding has been filed with the former ninth circuit:

(1) If the matter has been submitted for decision, further proceedings with respect to the matter shall be had in the same manner and with the same effect as if this section had not been enacted.

(2) If the matter has not been submitted for decision, the appeal or proceeding, together with the original papers, printed records, and record entries duly certified, shall, by appropriate orders, be transferred to the court to which the matter would have been submitted had this section been in full force and effect at the time such appeal was taken or other proceeding commenced, and further proceedings with respect to the case shall be had in the same manner and with the same effect as if the appeal or other proceeding had been filed in such court.

(3) A petition for rehearing or a petition for rehearing en banc in a matter decided before the effective date of this section, or submitted before the effective date of this section and decided on or after such effective date as provided in paragraph (1), shall be treated in the same manner and with the same effect as though this section had not been enacted. If a petition for rehearing en banc is granted, the matter shall be reheard by a court comprised as though this section had not been enacted.

(i) TEMPORARY ASSIGNMENT OF CIRCUIT JUDGES AMONG CIRCUITS.—Section 291 of title 28, United States Code, is amended by adding at the end the following:

''(c) The chief judge of the Ninth Circuit may, in the public interest and upon request by the chief judge of the Twelfth Circuit or the Thirteenth Circuit, designate and assign temporarily any circuit judge of the Ninth Circuit to act as circuit judge in the Twelfth Circuit or Thirteenth Circuit.

''(d) The chief judge of the Twelfth Circuit may, in the public interest and upon request by the chief judge of the Ninth Circuit or Thirteenth Circuit, designate and assign temporarily any circuit judge of the Twelfth Circuit to act as circuit judge in the Ninth Circuit or Thirteenth Circuit.

''(e) The chief judge of the Thirteenth Circuit may, in the public interest and upon request by the chief judge of the Ninth Circuit or the Twelfth Circuit, designate and assign temporarily any circuit judge of the Thirteenth Circuit to act as circuit judge in the Ninth Circuit or Twelfth Circuit.''.

(j) TEMPORARY ASSIGNMENT OF DISTRICT JUDGES AMONG CIRCUITS.—Section 292 of title 28, United States Code, is amended by adding at the end the following:

''(f) The chief judge of the United States Court of Appeals for the Ninth Circuit may in the public interest—

''(1) upon request by the chief judge of the Twelfth Circuit or Thirteenth Circuit, designate and assign 1 or more district judges within the Ninth Circuit to sit upon the Court of Appeals of the Twelfth Circuit or Thirteenth Circuit, or a division thereof, whenever the business of that court so requires; and

''(2) designate and assign temporarily any district judge within the Ninth Circuit to hold a district court in any district within the Twelfth Circuit or Thirteenth Circuit.

''(g) The chief judge of the United States Court of Appeals for the Twelfth Circuit may in the public interest—

''(1) upon request by the chief judge of the Ninth Circuit or Thirteenth Circuit, designate and assign 1 or more district judges within the Twelfth Circuit to sit upon the Court of Appeals of the Ninth Circuit or Thirteenth Circuit, or a division thereof whenever the business of that court so requires; and

''(2) designate and assign temporarily any district judge within the Twelfth Circuit to hold a district court in any district within the Ninth Circuit or Thirteenth Circuit.

''(h) The chief judge of the United States Court of Appeals for the Thirteenth Circuit may in the public interest—

''(1) upon request by the chief judge of the Ninth Circuit or Twelfth Circuit, designate and assign 1 or more district judges within the Thirteenth Circuit to sit upon the Court of Appeals of the Ninth Circuit or Twelfth Circuit, or a division thereof whenever the business of that court so requires; and

''(2) designate and assign temporarily any district judge within the Thirteenth Circuit to hold a district court in any district within the Ninth Circuit or Twelfth Circuit.

''(i) Any designations or assignments under subsection (f), (g), or (h) shall be in conformity with the rules or orders of the court of appeals of, or the district within, as applicable, the circuit to which the judge is designated or assigned.''.

(k) ADMINISTRATIVE COORDINATION.—Section 332 of title 28, United States Code, is amended by adding at the end the following:

''(i) Any 2 contiguous circuits among the Ninth Circuit, Twelfth Circuit, and Thirteenth Circuit may jointly carry out such administrative functions and activities as the judicial councils of the 2 circuits determine may benefit from coordination or consolidation.''.

(l) ADMINISTRATION.—The court of appeals for the ninth circuit as constituted on the day before the effective date of this section may take such administrative action as may be required to carry out this section and the amendments made by this section. Such court shall cease to exist for administrative purposes 2 years after the date of the enactment of this Act.

Page 8, line 8, strike the period at the end and insert '', whose official duty station shall be in California.''.

(Page 8, line 13, strike the period at the end and insert '', whose official duty station shall be in California.''.

Strike subsection (c) of section 3.

Insert after section 6 the following:

SEC. 7. NUMBER OF CIRCUIT JUDGES

The table contained in section 44(a) of title 28, United States Code, is amended—

(1) by amending the item relating to the first circuit to read follows:

''First ..... 7'';

(2) by amending the item relating to the second circuit to read follows:

''Second ..... 15'';

(3) by amending the item relating to the sixth circuit to read as follows:

''Sixth ..... 17'';

and

(4) by amending the item relating to the ninth circuit to read as follows:

''Ninth ..... 19''.

(5) by inserting after the item relating to the eleventh circuit the following:

''Twelfth 8
''Thirteenth ..... 6''.

SEC. 8. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this Act, this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

(b) SECTION 6.—Section 6 and the amendments made by section 6 shall take effect on the first October 1 that occurs on or after 9 months after the date on which all 5 judges authorized to be appointed to the ninth circuit court of appeals under section 5(a), and both judges authorized to be appointed under section 5(b), have been appointed, by and with the advice and consent of the Senate.

The CHAIRMAN. Pursuant to House Resolution 814, the gentleman from Idaho (Mr. SIMPSON) and the gentleman from California (Mr. BERMAN) each will control 20 minutes.

The Chair recognizes the gentleman from Idaho (Mr. SIMPSON).

Mr. SIMPSON. Mr. Chairman, I yield myself such time as I may consume, and I thank the Committee on Rules for making this amendment in order.

Mr. Chairman, this amendment would split the Ninth Circuit Court of Appeals and, as has already been stated on this floor, there is some controversy surrounding it. This is an issue that has been discussed for several years, both in the States that are affected by the Ninth Circuit and when I was in the State legislature, I served on the Judiciary and Rules Committee, and we discussed this many times and looked at the Ninth Circuit and the potential need for splitting the Ninth Circuit.

Let me state at the outset of this, it is inevitable that the Ninth Circuit will be split. At some point in time, whether it is with this bill or some other bill in the future, the need to split the Ninth Circuit is undeniable. At some point in time, the growth is such that it is growing so rapidly that we will have to split this court.

What are the factors that we should look at that should determine when it is time to split this court? I agree with the White Commission and the statements made by the gentleman from California earlier. Looking at the decisions of a judge, there is no reason to split the court. Whether one agrees or disagrees with those decisions, that is not the reason to split a court.

The reason to split a court is for administrative purposes, and in the past there has been much debate about the liberal decisions of the Ninth Circuit and so forth; and people have wanted to get out of the Ninth Circuit for that reason. That is not my intention. My intention is because of the administration of the Ninth Circuit.

Look at these facts. The Ninth Circuit has 48 judges, a figure that is approaching twice the number of total judges as the next largest circuit. It is twice as big as the next largest circuit in terms of judges, and the Ninth Circuit represents 56 million people, roughly one-fifth of the population of the U.S. This is 5 million more people than the next largest circuit. The Ninth Circuit encompasses nearly 40 percent of the geographic area of the United States. It runs essentially from the equator to the North Pole and from the corners of Montana to Guam. It is an enormous surface area.

The Ninth Circuit also has the most number of appeals filed and the highest percentage of increases in appeals filed, the most number of appeals still pending and the longest median time until disposition of those appeals.

To address this problem, this amendment creates a new Ninth Circuit featuring California, Guam, Hawaii and the Northern Marianas Islands; a new 12th Circuit, featuring Arizona, Nevada, Idaho, and Montana; and a new 13th, featuring Alaska, Oregon, and Washington.

This legislation also allows the President to appoint five new judges to permanent Ninth Circuit seats, along with two other judges who will temporarily fill seats. These additions are consistent with requests made by the Judicial Conference and will ensure that future caseload demands made on the new Ninth Circuit will more closely mirror its new judgeship resources. The amendment further ensures that the duty stations of these judges will be California, where the demand for more judges is highest.

The creation of more judgeships in the absence of additional reform will not improve the administration of justice in the United States. This is an instance in which bigger does not mean better. We must distribute judgeships with an eye toward achieving structural coherence within each circuit. This amendment accomplishes that.

For just a minute, Mr. Chairman, let me address some of the arguments that have already been made and will be made against this bill:

First, that we are doing it just because we do not like the decisions of the Ninth Circuit. While that may have been the case in the past and some of the tactics that has been talked about in the past when this issue has been discussed, certainly that has been one of the premier points of view that some people have raised, that is not the reason to do it. I agree with the White Commission.

Second, the cost. The cost, as has been stated here, is somewhat exaggerated, and the reason for that is that it took into consideration the addition of five new additional judges and two temporary judges. Those judges will be appointed whether or not this amendment is adopted because they are in the underlying bill. So the cost of this amendment is substantially overstated by the opponents of this legislation.

Third, we have talked about Governor Schwarzenegger of California not supporting this and that we should follow our fellow Republican Governor. I can tell my colleagues that there are Republican Governors that do support this that are affected in the Ninth Circuit. The California Governor is not the only Governor in the Ninth Circuit.

The fourth is judges do not want this, that there was a vote taken and it was 30 to nine of the judges of the Ninth Circuit that did not want this split to occur. Let me tell my colleagues how that occurred. That was a straw poll that was taken of the judges. The chief justice of the Ninth Circuit knew exactly how each of those judges voted. It was not a vote in secret, and each one of those judges knew that the chief justice of the Ninth Circuit is adamantly opposed to this split. Did that influence the vote? I do not know, but I can tell my colleagues that of the nine that voted to support the split, they are registered as the nine. Of the 30 that opposed the split, some of them opposed it, some of them were undecided, and they were counted as opposing the split. So to say that it was 30 to nine, I think, is an exaggeration of the case.

The fact is we have to look at the facts that I stated here. Is it time to split this court? I think it is undeniable that it is time. Justice in the Ninth Circuit is different than it is in every other circuit in this country. We do things differently in the Ninth Circuit because it is so large.

In every other circuit, when there is an appeal of the three-judge decision en banc to the full court, all the judges of that circuit sit and listen to the case, even those on the three-judge panel, so that they can have their points of view inserted into that discussion of the case. In the Ninth Circuit, that is not the case. It is so large that they pull names out of a hat, and 10 members and the chief sit en banc. One may or may not be chosen for it. Individuals that sat on the three-judge panel and listened to it may not even be on the en banc panel; and consequently they cannot have their views inserted as to why they decided the way they did as a three-judge panel.

So justice is different in the Ninth Circuit. I think it should be uniform. I think the size of the judiciary in the various circuits should be more closely related than they currently are with the Ninth Circuit; and, consequently, I hope my colleagues will support this amendment, and we will finally do what we have discussed for many years, that is, split the Ninth Circuit, make justice in the West just as it is in the rest of the country.

Mr. Chairman, I reserve the balance of my time.

Mr. BERMAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise to express my strong opposition to the amendment offered by the gentleman from Idaho. This amendment has never been marked up in the Committee on the Judiciary. It comes out of right field, left field, whatever field. It has never been considered by the committee with jurisdiction over the Federal courts. In fact, the only process it received was a subcommittee hearing last year where the witnesses were split about its advisability.

Let me talk about some of the reasons why I think this body should reject this amendment.

The costs of implementing a three-way split of the Ninth Circuit are enormous and could not come at a worst time. The Administrative Office of U.S. Courts estimates start-up costs in excess of $131 million, incurring additional annual costs of over $20 million each year as a result of this split. The courts will be forced to incur these costs when they are in the midst of a budget crisis.

The Federal courts have already engaged in one round of staff cutbacks. Late last month, the administrative office announced a 2-year moratorium on 42 Federal courthouse construction projects as a result of the hard freeze on the judiciary budget. The administrative office has indicated that it may need to start cutting more staff if the budget situation remains the same.

The Ninth Circuit judges themselves are overwhelmingly opposed to splitting the circuit. In April of this year, Ninth Circuit judges voted 30 to nine

against division of the circuit. In light of this overwhelming opposition from the affected judges, a split of the Ninth Circuit would constitute an unprecedented interference with the judicial system. Congress has never split a circuit over the objections of the affected judges.

If the opposition of the judges themselves does not carry water, perhaps a long bipartisan list of other opponents will be more persuasive. California Governor Schwarzenegger, as the gentleman has acknowledged, wrote in April of 2004 expressing his strong opposition to this proposal. The American Bar Association, the California Academy of Appellate Lawyers, a group of prominent Republican and Democratic lawyers and a number of county and State bar associations all oppose this split.

Split proponents have the burden of proving the advisability of a split; and in my mind, it is a heavy burden. They both must prove that the current Ninth Circuit does not efficiently and effectively serve the interests of justice and that a split would solve more problems than it would create.

To date, the empirical evidence in support of this split is lacking. In fact, for each reason offered as a justification to split the Ninth Circuit, there is a compelling response that justifies an opposite conclusion.

Some split proponents tout the common misperception that the Supreme Court reverses the Ninth Circuit an inordinate amount of the times. Based on this perception, they claim the Ninth Circuit is either out of touch with the rest of the country or issues an unusual number of bad decisions. The evidence does not support this assertion and, in fact, may lead to the opposite conclusion.

For the past 3 years, the reversal rate of the Ninth Circuit by the U.S. Supreme Court has compared favorably with other circuits; but even if we did not like the Ninth Circuit decisions, the gentleman's amendment does not propose shooting the justices. These judges will still be sitting on circuit courts. So it does not even achieve the goal that many of its proponents, if not the gentleman himself, seek to obtain with this amendment.

There was a reason why the leadership of the majority party decided to open up this bill for this nongermane amendment and no other nongermane amendments, and I would suggest it had nothing to do with judicial efficiency or effectiveness. It had to do with politics.

□ 1200

It has been noted that due to the Ninth Circuit's size, panels rarely involve the same three judges. Proponents of the split argue that the shifting nature of panels leads to inconsistent opinions. However, it can be said that the shifting nature of panels contributes to the objectivity of decision-making and makes it difficult for any one bias or philosophy to predominate. Less charitably, it could be said that the very consistency of Ninth Circuit opinions, not their inconsistency, is what split advocates find objectionable.

Split proponents note that the Ninth Circuit has almost twice as many judges as the next largest Federal circuit, serves the largest population and deals with the largest number of appeals. Split proponents cite these numbers to support the contention that the Ninth Circuit is overburdened and is simply too huge to operate efficiently. However, statistics belie those contentions. They support the opposite conclusion.

These statistics show that in recent years the Ninth Circuit handled over 207 appeals per circuit judge. When compared to other circuits, these numbers put Ninth Circuit judges in the middle of the pack with regard to the number of appeals they handle annually. Ninth Circuit judges may not be the most efficient, but they are certainly not among the least.

I am sure we will also hear a bit today about the length of time, in fact, we have heard that it takes the Ninth Circuit takes to decide individual cases. The truth is that the Ninth Circuit judges are remarkably quick at deciding cases following argument or submission. It takes the Ninth Circuit 1.4 months to file a decision following arguments, as opposed to the national average of 2.1 months. For submitted cases, it takes one-half month nationally compared with two-tenths of a month in the Ninth Circuit.

Those who raise concerns about delays in case dispositions also offer no such evidence that delays are due to circuit size. In fact, vacant judgeships constitute a more likely explanation for any delays in overall case disposition. Proof for this conclusion can be drawn from the experience of the much smaller Sixth Circuit, which has a large percentage of judicial vacancies and the longest time, in excess of the Ninth Circuit by far, in case disposition among circuits. If delays in case disposition were the keystone for splitting circuits, we would start with the Sixth.

Finally, and least credibly, some split advocates accuse the Ninth Circuit of being unduly activist. These folks believe a split would somehow curb this alleged tendency, or at least inoculate the carved-out 12th and 13th from the decisions of the old Ninth Circuit.

I reject judicial activism as a sound rationale for splitting the circuits, or for any other congressional action against the courts. If judicial activism were valid grounds for restructuring the courts, we would have to reconstitute the current U.S. Supreme Court, which has displayed its own judicial activism in crafting its doctrine of State sovereign immunity. Because judicial activism exists in the eye of the beholder, it cannot be a sound basis for restructuring courts.

In conclusion, we must ask ourselves whether the cure presented by this amendment would be worse than the supposed disease. The disruptions, costs, and uncertainty that would attend a split might turn it into a costly failure. Frankly, the best way for Congress to participate constructively in improving the Ninth Circuit would be to pass S. 878 without this amendment. The additional district and circuit judgeships this bill creates within the Ninth Circuit will help it get an even better handle on its caseload.

Mr. Chairman, I reserve the balance of my time.

Mr. SIMPSON. Mr. Chairman, I yield myself such time as I may consume.

If you were to follow the arguments of the gentleman from California, maybe we should be combining the smaller circuits into larger circuits, if cost is the issue.

And it is the other side talking about judicial activism, not this side. We are talking because of administrative purposes.

Mr. Chairman, I yield 3 minutes to the gentleman from Wisconsin (Mr. SENSENBRENNER), chairman of the full committee.

Mr. SENSENBRENNER. Mr. Chairman, I rise in support of the amendment offered by the gentleman from Idaho. And I know that an underlying argument on both sides of the aisle is whether one likes or dislikes the controversial decisions the Ninth Circuit has rendered from time to time. I would hope that we would disregard that and look at the statistics, that the Ninth Circuit has become unwieldy.

I agree with the gentleman from Idaho that the Ninth Circuit is going to get split sooner or later. I believe that he has an amendment to accomplish this split in the best manner possible.

Now, let us look at why the Ninth Circuit needs to be split. First, it has 48 judges already serving, seven more are created in this bill, and that is a figure that approaches twice the number of total judges in the next largest circuit.

Second, the population of the territory within the Ninth Circuit is 56 million people, and that is roughly one-fifth of the Nation's population, and 25 million more than the population of the next largest circuit. The Ninth Circuit comprises nearly 40 percent of the geographic area of the United States. So that means, to come to get your appeal heard, one, in many instances, has to travel much farther, to San Francisco, than litigants in the other circuits to get to where those circuits sit.

The Ninth Circuit has the most number of appeals filed and the highest percentage increase in number of appeals filed, the most number of appeals still pending, and the longest median time until disposition.

Now, having said all of these statistics, why should we delay in dealing with the split of the Ninth Circuit? There are some who have proposed only

one additional circuit be created, whether it includes all the States outside of California, Hawaii, Guam, and the northern Mariana Islands or whether the circuit should be divided into three pieces.

I think that what the gentleman from Idaho has done in dividing the Ninth Circuit into three, a new Ninth Circuit, a new 12th Circuit and a new 13th Circuit will make for the most efficient administration of justice.

I grant the point that most of the appeals arise from California, and that is why the gentleman's amendment has all seven of the new judges, five permanent and two temporary, sit with the newly reconstituted Ninth Circuit in the State of California. This is an idea whose time has come. If we delay adopting this amendment, we are just going to have more administrative problems caused by higher caseloads, so we might as well do it now; and I would urge the committee to support the amendment.

Mr. BERMAN. Mr. Chairman, may I get a sense of how much time each side has?

The CHAIRMAN. The gentleman from California has 12 minutes remaining.

Mr. BERMAN. Mr. Chairman, I yield 5 minutes to the gentleman from California (Mr. SCHIFF).

Mr. SCHIFF. Mr. Chairman, first, there were the court-stripping amendments, now there are the court-splitting amendments. What will come next, the court-flogging amendments?

Why is this being sought? Well, it is argued that the amendment to split the courts, to split the circuit, is an amendment out of the necessity of improving the timeliness of the actions within the Ninth Circuit. Critics have purportedly claimed the Ninth Circuit is too big and prevents litigants from receiving timely legal redress.

In the period since 1984, when the court was last authorized new judgeships, there has been significant growth of the court's caseload. It has more than doubled. But interestingly enough, both the Fifth and the 11th Circuits have experienced similar increases in caseload growth; however, no divisions of those circuits have been contemplate or proposed.

So why is it only the Ninth Circuit? In fact, the Ninth Circuit terminated more than 10,000 cases in calendar year 2002, and has increased its efficiency year after year due to the continuing examination of case processing procedures and constant innovation. This has been accomplished despite unfilled vacancies. If the Congress and those that offer this amendment were truly concerned with timeliness, we would have filled those vacancies a long time ago.

So then what is the basis of this court-splitting, circuit-splitting amendment? Perhaps this is being sought because of an outcry of the judges within the Ninth Circuit and the members of the bench within the Ninth Circuit that they feel this has to be done, that it would improve the efficiency of the courts. But that cannot be it either, because the overwhelming opinion of the judges and the attorneys in the Ninth Circuit, as well as the statements of others concerned with this issue, having submitted written statements or given oral testimony before the commission, cut the other way.

Among those opposing the division of the Ninth Circuit were 20 out of 25 persons testifying at the Seattle hearing of the commission opposed to the split, 37 out of 38 persons testifying at the San Francisco hearing opposed to the split, and the governors of California, Washington, Oregon, and Nevada, the American Bar Association, and the Federal Bar Association all opposed the split. Plainly, this is not on outcry from those most immediately affected.

Well, it is argued that the need for consistency requires the split. But, again, the White Commission concluded, neither do we see a need to split the Ninth Circuit in order to solve problems having to do with consistency, predictability, and coherence of circuit law; there is no recognizable evidence of such a conflict. Indeed, the Circuit's use of its en bloc review process is designed to resolve and has effectively resolved precisely such conflicts.

In sum, Mr. Chairman, when they say it is about efficiency, when they say it is about consistency, and when they say it is about timeliness, it is about ideology. And as the White Commission stated, there is unanimous agreement that ideology should never be the ideology to split a circuit.

Mr. SIMPSON. Mr. Chairman, I yield 2½ minutes to the gentleman from Arizona (Mr. RENZI).

Mr. RENZI. Mr. Chairman, I thank the gentleman from Idaho for yielding me this time, and for his hard work and, in particular, his insight on this amendment; and I support the gentleman in looking forward to splitting up the Ninth Circuit Court, which I think is long overdue.

I find the legislation to be a real positive step in that it also incorporates the language that we worked on which removes Arizona from the Ninth Circuit Court. I find it to be forward looking. It acknowledges the simple fact the nine States that now compromise the Ninth Circuit Court continue to experience phenomenal growth rates.

Throughout the Southwest, we are seeing more and more homes being built, more and more people moving into the Southwest. Our population rates are exploding. The Ninth Circuit, as it exists today, is simply too big to quickly and effectively administer justice. It takes over a year to get even a case to be heard in the Ninth Circuit. For this reason alone, we need to look at splitting it up to better serve the needs of the citizens of the western United States.

The new circuit map proposed by the gentleman from Idaho (Mr. SIMPSON) addresses current population trends and alleviates caseload backlogs. The Ninth Circuit Court's current jurisdiction encompasses nine States and, again, almost 56 million people, roughly 19 percent of the U.S. population in what, again, is the fastest growing region of America.

Explosive population growth in the Ninth Circuit Court has outpaced the court's ability to administer justice in an efficient manner and the caseload is simply too big to administer efficiently.

The opposition claims the court is efficient, but I cite this example. In 2002, the Ninth Circuit Court had more cases pending for more than a year than all other circuit courts combined. In addition, the circuit court is too big for judges to track the opinion of other judges, which results in inconsistencies and unfairness in the judicial process. For example, two different three-judge panels on the same day issued different legal standards to resolve the same issue. How are district judges supposed to even know which standards, which holdings, to follow when such confusion, when such a lack of consistency exists on the bench?

I urge my colleagues to support this amendment to release us from the Ninth Circuit Court. They forgot to find the simplicity, they forgot to find the clarity you need in seeking the truth, those who continue to legislate from the bench, who now fight to struggle and protect the empire they have built to themselves.

Mr. BERMAN. Mr. Chairman, I yield myself 1 minute.

Now the mask comes off. The last line of the gentleman: They are legislating from the bench; we do not like their decisions.

Believe me, my colleagues, the original proponents of this split and many of its supporters are doing this not based on judicial efficiency, but on ideology. If you want to deal with rising population, you authorize new judgeships.

The major reason in any of the variables where the Ninth Circuit has lagged is because we have not filled the vacancies that were already authorized. You can have one circuit, you can have three circuits, you can have 10 circuits, but if you do not keep up with the growing litigation requirements by authorizing and filling those judgeships, you will have greater delays. It is a very simple equation.

□ 1215

Mr. Chairman, I yield 3½ minutes to the gentlewoman from Texas (Ms. JACKSON-LEE), a member of the Committee on the Judiciary.

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the distinguished ranking member for yielding me this time, and I regretfully rise to vigorously oppose the distinguished gentleman from Idaho's amendment. I consider this similar to court stripping,

and that is the legislation that we have had over the past couple of weeks dealing with court stripping and taking away rights from the courts for reasons that are inexplicable.

Let me just cite for my colleagues a reason that has been argued by the proponent of this amendment, that the Ninth Circuit is too big, that there are too many delays. But let me just say that, in making that criticism, you might be interested in knowing that, last year, the average length of turnaround for cases before the Ninth Circuit was a month less than the average case lasted in 2002. Further, the Ninth Circuit's average turnaround time has improved 16 percent relative to the national average since 1997.

So the question would be, why would you, in complete rejection of the Governor of the State of California and the former Governor, try to restructure these courts? First of all, in a time when we are tightening our belts, when we would not even allow a simple amendment that would raise the salaries of the Federal judges to about $185,000, far less than a first associate in some of our major law firms, why would you not allow that amendment but you would in fact spend more dollars to redesign these courts?

The cost is going to be enormous. With an estimated start-up cost of about $131 million and an estimated annual recurring cost of about $22 million, this is a costly expenditure when we do not really have the dollars to do so. I would much rather spend dollars on making sure we have enough Federal judges, district judges, so that all of the petitioners and defendants can get a fair hearing in our courts.

The other thing is geography. The Ninth Circuit includes California. Although there are nine States in the Ninth Circuit, more than two-thirds of the workload of appeals is from California. There is no way to evenly divide the circuit into multiple circuits of roughly proportionate size without dividing California. The consistency of the decisions, the fairness of the decisions and the openness of the court gets undermined.

The other is, of course, history. Over the course of the extremely colorful history of the West, certain ties have developed that should be respected in circuit alignment in order to provide for continuity and stability. Arizona, for example, may at one time have seen itself as a Rocky Mountain State, but the truth today is that its economic and cultural ties are overwhelmingly closer to California. History plays a large part in it. Dividing the court simply takes away and makes the lives of judges more difficult. But the important point is that the circuits have reflected the balance of America, the fairness of America.

I live in the 5th and 11th Circuits, and I might say, I vigorously disagree with them on their civil rights decisions. They make the absolute wrong decisions, but they are the circuit courts. Even if you disagree with the Ninth Circuit, you cannot come here and cut them up and tear them up because you disagree with their philosophy, their legal decisions, the rendering of justice. We have to be better than that in America, and I would rise to oppose this amendment.

Today I rise in strong opposition to the amendment being offered by Representative SIMPSON which would divide the current Ninth Circuit to create three new Circuits.

I believe it is important at the outset that we understand at least three important points:

The first goes to cost. It is important to remember that we are not just talking about splitting up the judges of the existing Court of Appeals into separate courts of appeals. We are actually talking about dividing the entire and well integrated administrative structure of the Ninth Circuit to create three separate and largely duplicative administrative structures. With an estimated start-up cost of about $131 million, and an estimated annual recurring cost of about $22 million, this is both costly and wasteful. This is especially true when we face a budget crisis requiring us to lay off employees performing critical functions such as the supervision of probationers and preparation of sentencing reports.

The second point goes to geography. The Ninth Circuit includes California. Although there are nine states in the Ninth Circuit, more than two-thirds of the workload of the court of appeals is from California. There is no way to divide the circuit into multiple circuits of roughly proportionate size without dividing California. While I can understand why some might want to have a federal circuit court of appeal that was dominated by individuals from their State, today we are being asked to play politics with judicial geography and this is absolutely unacceptable in our democratic society.

Some of the proponents of this bill have argued that smaller, rural States are disadvantaged by being lumped into a circuit that contains a State the size of California with a substantial urban population base. But surely, they would not argue that Vermont and New Hampshire should be granted their emancipation from the larger, more urban States in the Second and First Circuits. Our federal bench should not be manipulated simply to make each circuit homogeneous.

The third point goes to history. Over the course of the extremely colorful history of the west, certain ties have developed that should be respected in circuit alignment in order to provide for continuity and stability. Arizona, for example, may at one time have seen itself as a rocky mountain state, but the truth today is that its economic and cultural ties are overwhelmingly closer to California than to Colorado or Wyoming. Another example is California and Nevada. Their bond is so great that they have joined ion a compact to protect Lake Tahoe. Moreover, Idaho and eastern Washington have essentially treated their district judges as interchangeable for years. The division proposed in this amendment to S. 878 would server all these ties by dividing Arizona from California, California from Nevada and Idaho from Washington.

Proponents of this split have long criticized the Ninth Circuit for its size and caseload. They might be interested to note that last year the average length of turnaround for cases before the Ninth Circuit was a month less than the average case lasted in 2002. Further, the Ninth Circuit's average turnaround time has improved 16 percent relative to the national average since 1997.

Dividing a Circuit should not take place simply to make the lives of judges or lawyers easier or cozier to reduce travel burdens. It should only take place when there is demonstrated proof that a circuit is not operating effectively and there is a consensus among the bench, the bar, and the public that they serve, that division is the appropriate remedy. Moreover, I do not see any persuasive evidence that would suggest that the Ninth Circuit is not operating effectively.

What I do not understand is why these repeated efforts to split the Ninth Circuit are pursued despite bi-partisan opposition ranging from Gov. Arnold Schwarzenegger (R–CA) to the overwhelming majority of Ninth Circuit judges, including the current Chief Judge, and Senior Judge Clifford Wallace, a former Chief Judge who was nominated by a Republican President. This irresponsible amendment would effectively take an otherwise non-controversial bill and turn it into a controversy. Whatever happened to that old adage, ''if it ain't broke, don't fix it?''

I urge my colleagues to vote ''no'' on the Simpson amendment to S. 878.

Mr. SIMPSON. Mr. Chairman, I yield myself 30 seconds. While I appreciate the facts from the gentleman from California's comments, the reality is that some people, as I stated in my opening statement, support this because they do not like the decisions of the Ninth Circuit. That is a reality. But as the chairman stated and I stated, that is not the reason to do it. Look at the facts. Do not vote on it based on ideology.

I would also state that it is interesting that, from that side of the aisle, there are people who do not want to split it because they do like the decisions of the Ninth Circuit, and so they want them to apply to the entire West. For the same reason that some Members on my side want it split, some people on their side do not want it split.

Mr. Chairman, I yield 2 minutes to the gentleman from Montana (Mr. REHBERG).

Mr. REHBERG. Mr. Chairman, I thank the gentleman from Idaho for taking on this issue which is something that Montana has been calling for since the early eighties. When we finally got an appointment to the Ninth Circuit, we threw a party. We had not had one since the Kennedy era.

It is not about economic ties. I am not going to make the argument that I do not like the decisions that they make. In fact, I do not have to make the argument. The U.S. Supreme Court made the argument when they overturned 24 or 25 other cases. But there is a precedent within the United States for reapportioning the work, and it is called the United States Congress. It is no surprise that the judges do not like it. Who less likes reapportionment than United States Congressmen? We are the ones who complain the most, except in my case; I represent the

whole State, so I cannot complain. But the State of California would love nothing more than to create the Supreme Court West. Back in the eighties when we tried to get it, all the appointments were going to California. We had a problem with our President at the time. We tried to make the argument.

Economic ties. If you want to make the argument about economic ties, what social and economic ties does Montana have to California other than the fact they are coming up and buying our property? The biggest problems that we have within the State of Montana are Federal problems that need to be addressed as locally as possible. I give great credit to Justice Sid Thomas who has now brought people to Montana to hear these cases. Why? Because he recognized as a matter of fairness that Montana deserved every bit as much of a right to have those cases heard in Montana as it did in California.

It makes logical sense to divide up the court. It makes logical sense. In the executive branch, when the populations shift, usually the needs shift. What do we do with the bureaucracy? And I do not mean that in the negative term. The bureaucracy usually moves to where the issue or the problem is existing. In the judiciary, it does not seem to do that.

Why do the lawyers vote overwhelmingly not to split it? They are not stupid. They are not going to go against a judge that may someday judge against their case. They are covering their rear ends. So it makes logical sense. Montana has been asking for it. Now is the time. I thank the gentleman from Idaho for sponsoring this legislation.

Mr. BERMAN. Mr. Chairman, I yield myself 1 minute.

Perhaps the most eloquent and forceful argument against the amendment being proposed and the split being proposed by the gentleman from Idaho came from the former chief judge of the Ninth Circuit, a Montana justice, Judge Browning, who felt very strongly that the interests of justice were not served by this particular split.

As I listened to the proponents of this amendment talk, the judges do not want it. The lawyers do not want it. They are not talking the merits. They are scared of the judges. We hear no clamor from the litigants about a split of the circuit. We hear no argument that there is some compelling public ground swell for this split. Some of my colleagues do not like this, and they want to ascribe motivations to people who disagree with them. They are afraid of the judges. They assume the judges are not going to act on what is in their interests. They are not going to lose their judgeships over this split. They believe justice is not served by this split.

I urge opposition to this amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. SIMPSON. Mr. Chairman, I yield 2 minutes to the gentleman from Oregon (Mr. WALDEN).

Mr. WALDEN of Oregon. Mr. Chairman, I rise today in support of this amendment. The Ninth Circuit represents 56 million people, or roughly one-fifth of our Nation's population. This is 25 million more people than the next largest circuit; 56 million people in one circuit. It encompasses 40 percent of the geographic area of the United States. Traveling across this much land mass wastes both time and money.

The Ninth Circuit also has the most number of appeals filed and the highest percentage increase in appeals filed, the most number of appeals still pending, and the longest median time until disposition. This is an overworked, overstretched court.

In addition, since the size of the circuit inhibits greater en banc participation by the entire circuit, the Ninth has adopted a practice that allows it to sit en banc with only 11 judges. This means the plurality of those 11, six judges, can effectively determine the case law for the circuit and the remaining 20 judges who serve. All of this leads to inconsistency in case law development and uncertainty among litigants. The outcome of cases in the Ninth are frequently determined more by the composition of a given three-judge panel, not by the law of the circuit as it has evolved. This is detrimental to the law-declaring role, one of a circuit's two primary functions, the other being to correct errors on appeal.

Mr. Chairman, I commend the gentleman from Idaho who has worked tenaciously on this issue to try and bring about fairness in the distribution of the workload in the Ninth Circuit and to bring about fairness in terms of where these cases are heard. We heard from the gentleman from Montana about the need at least to have a judge come there and hear a case once in a while. I think the gentleman from California, if I heard right from the gentleman from Montana, the judge he cited moved to California in 1960 and never held a hearing in Montana. In effect, he became a Californian.

Mr. Chairman, I support this amendment.

Mr. BERMAN. Mr. Chairman, I yield 1 minute to the gentleman from California (Mr. SCHIFF).

Mr. SCHIFF. I thank the gentleman for yielding me this time.

Mr. Chairman, I just wanted to compliment my colleague on the other side for his comments about the Ninth Circuit judges being overworked and being overstretched. It is really gratifying to hear all the concern for the workload of the judges in the Ninth Circuit. That concern, I think, would carry more weight with the opposition to this bill if it were reflected historically in a desire to fill the vacancies for those overworked and overstretched judges. If there had been, I think, a stronger pattern of support for that, for dealing with the burden on the caseload in the Ninth Circuit, then there would be less inclination to think this is all about ideology. But when the gentleman goes on to say that part of this is also due to his dislike of the outcome of cases determined by the composition of these three-judge panels rather than law precedent, we get, once again, back to ideology rather than a concern over caseload or workload.

Again, for those reasons, the White Commission and the courts have historically and unanimously opposed circuit splitting over matters of ideology.

Mr. SIMPSON. Mr. Chairman, I yield 1½ minutes to the gentleman from Idaho (Mr. OTTER).

(Mr. OTTER asked and was given permission to revise and extend his remarks.)

Mr. OTTER. I thank my colleague and my good friend from Idaho for yielding me this time.

Mr. Chairman, I had quite a few prepared remarks, but most all of the information that I was going to impart to this body has already been said time and time again about the overload of the courts; the workforce themselves; how many additional judges have been added; and the fact that we almost have twice as many judges now in the Ninth Circuit as there are in the next closest circuit; the geographic size and obviously the population all present tremendous problems for those of us in the Ninth Circuit.

It was said earlier that, when Congress does not like something, and especially we have been investing and assigning all manner of responsibility and all manner of attitude to why we want to divide up the Ninth Circuit, I would remind the gentleman from California and the gentlewoman from Texas that, if you read article III of the Constitution, it says very clearly that the judicial system shall be invested in the Supreme Court and such other inferior courts as Congress may from time to time deem necessary. So these courts are indeed a creature of this Congress, and so then it falls to our responsibility, I think, as the gentleman from Montana clearly pointed out, that when we need to reapportion because of size and because of geography that is involved and the amount of people that are involved, it is necessary for this Congress to take action and this action is long overdue.

Mr. Chairman, I rise today in support of the amendment my friend from Idaho is offering to split the Ninth Circuit Court of Appeals. It's no surprise that the outcome of many of the Ninth Circuit's decisions is inconsistent case law that results in uncertainty among litigants.

After all, the Ninth Circuit encompasses nearly 40 percent of the land in the United States, stretching from Canada to Mexico and from Alaska to Guam. That means the Ninth Circuit must represent one out of every five Americans, even though there are eleven circuit courts handling appeals throughout the country.

The number of people who call the Ninth Circuit home and the distance it takes to travel across the massive geographic area already places a huge burden on this court. On top of

that, the Ninth Circuit has more appeals filed than any other court. And with each new appeal the time it takes to get a decision increases.

It's become an administrative nightmare, Mr. Chairman, but it results in more than just a paperwork backlog. The Ninth Circuit is simply too large to do an effective job, so it leaves people in my state and throughout the West without an effective voice in our nation's legal system.

It's a liability that deserves serious consideration by us today. An effective and efficient court system is essential to protecting the freedoms that we as Americans hold dear. The checks and balances that safeguard our liberties are meaningless without timely rendering of justice.

We must not let bureaucracy and administrative stagnation undermine development of coherent and consistent case law. This is an instance when bigger absolutely does not mean better, and it is important that we address this issue now.

My friend Mr. Simpson's amendment would create two new circuit courts and split the up the Ninth so that each of the three courts are better represented both proportionally and regionally. By focusing on a smaller geographic area with a smaller population base, the court would have the opportunity to develop a body of law based on consistency, constitutionality and rational public policy.

This simple solution would enable the judicial system in the West to render fair decisions in a timely manner and start clearing the enormous court backlog throughout our region. I'm proud to be working with Congressman SIMPSON on his continued effort to reshape the court system in the West and restore some commonsense and judicial reality to the federal appeals process. I strongly encourage you to vote for this amendment.

Mr. BERMAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I am not challenging the constitutionality of the proponent's amendment. I am challenging the wisdom of the proponent's amendment. If we do this, we are doing something unprecedented with significant adverse budgetary consequences in a fashion that will not distribute the caseload in any sense equally, that is opposed by the judges, that is opposed by the lawyers who practice in this court and, to the extent that it is ideologically motivated, foists on our poor California Republicans a circuit that they think will not serve their interests.

So I hate to see this squabble between the Idaho and Montana Republicans and the California Republicans, but the fact is this is why, even though you have the authority to draw these lines, it may not be wise to.

□ 1230

I urge opposition to the amendment, and I include for the RECORD a letter from the highly praised Ninth Circuit judge from Montana opposing the split.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT,
Billings, MT, October 28, 2003.

Re: H.R. 2723

Hon. Lamar Smith, Chairman,
Subcommittee on the Courts, the Internet, and Intellectual Property, Washington, D.C.

DEAR CHAIRMAN SMITH: I am a United States Circuit Judge with chambers in Billings, Montana. I write in opposition to H.R. 2723. I am also authorized to state that the following Ninth Circuit Judges whose official stations are within the boundaries of the proposed Twelfth Circuit join me in opposing H.R. 2723: Judge Otto R. Skopil (Portland, Oregon), Judge Betty Binns Fletcher (Seattle, Washington), and Judge Jerome Farris (Seattle, Washington). In addition, Judge James R. Browning (San Francisco, California), Judge Alfred T. Goodwin (Pasadena, California), Judge Robert Boochever (Pasadena, California) and Judge M. Margaret McKeown (San Diego, California), whose initial official duty stations were within the boundaries of the proposed Twelfth Circuit (Montana, Oregon, Alaska, and Washington, respectively), have authorized me to register their opposition to H.R. 2723. All of these judges maintain strong connections with their former states of residence. In particular, Judges Goodwin and McKeown wished me to emphasize that they spend a significant amount of time each year in the Northwest, maintain offices there, and retain close professional relationships with the bar and bench in Oregon and Washington, respectively.

Sincerely,

SIDNEY R. THOMAS.

Mr. Chairman, I yield back the balance of my time.

Mr. SIMPSON. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I appreciate the gentleman's concern for the squabble between the Republicans from California and the Republicans from Idaho. But I can tell the gentleman that some Republicans from California also see the need to split the Ninth Circuit. They also are concerned about not having the rest of us in the pool with them.

Let me just say this. The White Commission has been mentioned several times here, and I agree with the White Commission, as I have stated before. Splitting the court because one does not like the decisions is not the right reason to do it. If those individuals here want to split this court because they think that they are going to get better decisions out of a new court that they like better, they are going to be mighty disappointed because I can find decisions on any court anywhere in the land that I am going to disagree with. That is not a valid reason to split a court, even though there are some people who want to do it for that reason.

What I am asking the Members to do is to look past that and look at the statistics, look at the numbers, look at the facts that the reality is that it is going to be split at some time. We cannot go on with a court that is twice as large, will some day, looking at the growth rate, be three times as large as any other circuit court. According to the argument of the gentleman from California, what we should have done in 1980 when we split the Fifth Circuit was just add more judges, but we decided to split it, and, yes, all the judges there wanted to split the Fifth Circuit.

I would like to know of this 30 to nine vote that is being touted, how many of them were the undecideds that were counted in the 30. How many of them would have voted one way or another if a secret ballot was taken and they did not have to reveal who they were to the chief justice that they knew was opposed to the amendment.

I will also tell the Members that the White Commission also recognized there was something wrong with the Ninth Circuit because they recommended not a split in the Ninth Circuit, but to split it administratively, something that had not been done in any other region. They recognized that the administration of the Ninth Circuit was too large and needed to be handled differently. It was not efficient. So they recommended splitting the administration of it. Why they did not recommend splitting the court, I do not know. I think it is because it was always looked at as partisan. And I will also tell the Members that five of the nine Supreme Court Justices have made public comments about the need to split the Ninth Circuit.

I urge support for the amendment.

Mr. SMITH of Texas. Mr. Chairman, I support this amendment.

The Ninth Circuit has become so large that unless something is done, it risks becoming irrelevant.

In the past 2 years, the Courts, Internet and Intellectual Property Subcommittee has held two hearings on this issue.

It is clear to me that this bill contains much-needed reforms to the court system.

As has been pointed out, the Ninth Circuit is the largest in the country. It represents 56 million people and has 48 judges—twice the number of judges in the next largest circuit.

It has gotten so big that because its size prohibits participation by the entire circuit, as few as six judges often determine case law for the entire circuit.

This leads to inconsistent decisions and uncertainty for litigants.

The Ninth Circuit leads all circuits in total appeals filed and pending.

The increase in its workload over one and 5-year periods leads all circuits.

Worst of all, it continues to rank as one of the slowest circuits in disposing of cases.

Mr. Chairman, bigger court systems do not mean better justice, but slower justice.

And as we know, ''justice delayed is justice denied.''

Unless this problem is addressed, the Ninth Circuit will continue to grow in size but diminish in effectiveness.

Mr. SIMPSON'S amendment takes a common sense approach and will make the Ninth Circuit more efficient.

This amendment creates a new Ninth Circuit, as well as a new Twelfth and Thirteenth.

In addition, it authorizes the President to appoint five new judges to permanent Ninth Circuit seats and two judges to fill temporary seats.

The Ninth Circuit has grown too big to take care of the people it serves. I urge my colleagues to support this amendment and help us improve the justice system in this country.

Americans for the most part have retained faith in our judiciary because they believe it applies the rule of law, from traffic court to the Supreme Court, when adjudicating legal disputes.

I hope we are able to return to the Ninth Circuit an ability to discharge its civic functions on behalf of the American people.

The CHAIRMAN. All time for debate has expired.

The question is on the amendment offered by the gentleman from Idaho (Mr. SIMPSON).

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. BERMAN. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 205, noes 194, not voting 33, as follows:

[Roll No. 492]

AYES—205

Aderholt	Gibbons	Northup
Akin	Gillmor	Nunes
Alexander	Gingrey	Nussle
Bachus	Goodlatte	Osborne
Baker	Granger	Ose
Ballenger	Graves	Otter
Barrett (SC)	Green (WI)	Oxley
Bartlett (MD)	Gutknecht	Paul
Barton (TX)	Hall	Pearce
Bass	Harris	Pence
Beauprez	Hart	Peterson (MN)
Biggert	Hastings (WA)	Peterson (PA)
Bilirakis	Hayes	Petri
Bishop (UT)	Hayworth	Pickering
Blackburn	Hefley	Pitts
Blunt	Hensarling	Platts
Boehner	Herger	Pombo
Bonilla	Hobson	Pomeroy
Bonner	Hoekstra	Porter
Boozman	Hostettler	Pryce (OH)
Bradley (NH)	Houghton	Putnam
Brady (TX)	Hulshof	Quinn
Brown (SC)	Hunter	Radanovich
Brown-Waite, Ginny	Hyde	Ramstad
Burgess	Issa	Regula
Burns	Istook	Rehberg
Burr	Jenkins	Renzi
Burton (IN)	Johnson (CT)	Reynolds
Camp	Johnson, Sam	Rogers (AL)
Cantor	Jones (NC)	Rogers (KY)
Capito	Keller	Rogers (MI)
Carter	Kelly	Rohrabacher
Chabot	Kennedy (MN)	Ros-Lehtinen
Chocola	King (IA)	Ryan (WI)
Coble	King (NY)	Ryun (KS)
Cole	Kingston	Saxton
Collins	Kirk	Schrock
Crane	Kline	Sensenbrenner
Crenshaw	Knollenberg	Sessions
Cubin	Kolbe	Shadegg
Culberson	LaHood	Shaw
Cunningham	Latham	Sherwood
Davis, Jo Ann	LaTourette	Shimkus
Davis, Tom	Leach	Shuster
Deal (GA)	Lewis (CA)	Simpson
DeLay	Lewis (KY)	Smith (MI)
Diaz-Balart, L.	Linder	Smith (NJ)
Diaz-Balart, M.	LoBiondo	Smith (TX)
Doolittle	Lucas (OK)	Souder
Duncan	Manzullo	Stearns
Dunn	McCotter	Stenholm
Ehlers	McCrery	Sweeney
Emerson	McHugh	Tancredo
English	McInnis	Taylor (MS)
Everett	McIntyre	Taylor (NC)
Feeney	McKeon	Thomas
Ferguson	Mica	Thornberry
Flake	Miller (FL)	Tiahrt
Foley	Miller (MI)	Tiberi
Fossella	Miller, Gary	Toomey
Franks (AZ)	Moran (KS)	Turner (OH)
Frelinghuysen	Murphy	Upton
Gallegly	Musgrave	Vitter
Garrett (NJ)	Myrick	Walden (OR)
Gerlach	Neugebauer	Walsh
Gilchrest	Ney	Wamp
Weldon (FL)	Wicker	Young (AK)
Weller	Wilson (SC)	Young (FL)
Whitfield	Wolf	

NOES—194

Allen	Green (TX)	Obey
Andrews	Grijalva	Olver
Baca	Gutierrez	Ortiz
Baird	Harman	Owens
Baldwin	Herseth	Pallone
Becerra	Hill	Pascrell
Bell	Hinchey	Pastor
Berkley	Hinojosa	Pelosi
Berman	Holden	Price (NC)
Berry	Holt	Rahall
Bishop (GA)	Honda	Rangel
Bishop (NY)	Hooley (OR)	Reyes
Blumenauer	Hoyer	Rodriguez
Bono	Inslee	Ross
Boswell	Israel	Rothman
Boucher	Jackson (IL)	Roybal-Allard
Boyd	Jackson-Lee (TX)	Royce
Brady (PA)	Jefferson	Ruppersberger
Brown (OH)	Johnson (IL)	Rush
Butterfield	Johnson, E. B.	Ryan (OH)
Calvert	Jones (OH)	Sabo
Capps	Kanjorski	Sánchez, Linda T.
Capuano	Kaptur	Sanchez, Loretta
Cardin	Kennedy (RI)	Sanders
Cardoza	Kildee	Sandlin
Carson (IN)	Kilpatrick	Schakowsky
Carson (OK)	Kind	Schiff
Case	Kleczka	Scott (GA)
Castle	Langevin	Scott (VA)
Chandler	Lantos	Serrano
Clyburn	Larsen (WA)	Shays
Conyers	Larson (CT)	Sherman
Cooper	Lee	Simmons
Costello	Levin	Skelton
Cox	Lewis (GA)	Slaughter
Cramer	Lipinski	Smith (WA)
Crowley	Lofgren	Snyder
Cummings	Lowey	Solis
Davis (AL)	Lucas (KY)	Spratt
Davis (CA)	Lynch	Stark
Davis (FL)	Maloney	Strickland
Davis (IL)	Markey	Stupak
Davis (TN)	Marshall	Tanner
DeFazio	Matheson	Tauscher
DeGette	Matsui	Thompson (CA)
DeLauro	McCarthy (MO)	Thompson (MS)
Deutsch	McCarthy (NY)	Tierney
Dicks	McCollum	Turner (TX)
Dooley (CA)	McDermott	Udall (CO)
Doyle	McGovern	Udall (NM)
Dreier	McNulty	Van Hollen
Edwards	Meehan	Velázquez
Emanuel	Meek (FL)	Visclosky
Engel	Menendez	Waters
Eshoo	Michaud	Watson
Etheridge	Miller (NC)	Watt
Evans	Miller, George	Waxman
Farr	Mollohan	Weiner
Fattah	Moore	Wexler
Filner	Moran (VA)	Wilson (NM)
Ford	Murtha	Woolsey
Frank (MA)	Nadler	Wu
Frost	Napolitano	Wynn
Gilchrest	Neal (MA)	
Gonzalez	Oberstar	
Gordon		

NOT VOTING—33

Abercrombie	Gephardt	Millender-McDonald
Ackerman	Goode	Nethercutt
Boehlert	Greenwood	Norwood
Brown, Corrine	Hastings (FL)	Payne
Buyer	Hoeffel	Portman
Cannon	Isakson	Sullivan
Clay	John	Tauzin
Delahunt	Kucinich	Terry
DeMint	Lampson	Towns
Dingell	Majette	Weldon (PA)
Doggett	Meeks (NY)	
Forbes		

□ 1306

Ms. BALDWIN and Messrs. CARDOZA, SCOTT of Georgia, DAVIS of Tennessee, and BERRY changed their vote from ''aye'' to ''no.''

Messrs. GUTKNECHT, GERLACH, THOMAS, ROHRABACHER, NUNES, OSE, LEWIS of California, GARY G. MILLER of California, McKEON, CUNNINGHAM, RADANOVICH, and GALLEGLY, and Mrs. JOHNSON of Connecticut changed their vote from ''no'' to ''aye.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN. There being no other amendments, the question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mrs. BIGGERT) having assumed the chair, Mr. LAHOOD, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the Senate bill (S. 878) to authorize an additional permanent judgeship in the district of Idaho, and for other purposes; pursuant to House Resolution 814, he reported the Senate bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted in the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the third reading of the Senate bill.

The Senate bill was ordered to be read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. BERMAN

Mr. BERMAN. Madam Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. BERMAN. In its present form, yes.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. BERMAN moves to recommit the bill S. 878 to the Committee on the Judiciary with instructions that the Committee report the same back to the House forthwith with the following amendment:

In section 6(h) of the bill, add the following new paragraph at the end:

(4) If the matter is one involving a judge who has refused the request of a party to a proceeding to disqualify himself or herself pursuant to a recusal, any appeal of that decision shall be had in such court.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. BERMAN) is recognized for 5 minutes in support of his motion.

Mr. BERMAN. Madam Speaker, the Committee on Rules denied me and the rule denied me the opportunity to offer a variation of this amendment in committee, even though they allowed one other nongermane amendment, which we just adopted.

This amendment, I believe, addresses a serious problem in the current structure of the Federal procedures. If an

outside party complains that a Federal judge has engaged in misconduct, that party has a right to have the presiding judge entertain his complaint. If it is the district court, it is the chief judge of the district that that judge sits in; if it is the appellate court, it is the presiding judge of the circuit; and if it is the Supreme Court, it is the Chief Justice of the Supreme Court.

If the presiding judge or the chief judge does not resolve that, the complainant is entitled to a three-judge panel. That is for misconduct.

But for recusals based on an apparent conflict of interest, asking a judge to step aside and not hear a particular case, there is absolutely no process other than the judge himself who is being alleged to have not been appropriately sitting on that case because of conflicts of interest or apparent conflicts of interest; that judge gets to decide for himself. That system is not right.

What this amendment would do in order to be germane and apply as a pilot project, and Chief Justice Rehnquist himself highlighted this statutory anomaly to several U.S. Senators; these Senators had expressed concern that Justice Scalia did not recuse himself from a case in which Vice President CHENEY was a named litigant. While this case was pending, Justice Scalia had taken a duck-hunting trip with the Vice President. Not only did they hunt together for several days, but Justice Scalia also traveled with the Vice President aboard Air Force 2.

In a public document explaining his refusal to recuse himself from a case involving his hunting buddy, Justice Scalia wrote that he did not believe ''his impartiality might reasonably be questioned.'' In commenting on Justice Scalia's decision, Chief Justice Rehnquist wrote to the Senators, ''There is no formal procedure for a court review of a decision of a Justice in such a case.''

While I believe that my notions of the propriety of Justice Scalia's refusal to recuse himself are not important, the opinion of the American people is important. The efficacy of our court system depends entirely on the perception that the courts will administer justice impartially. If the courts lose the trust of the people, they lose their only real power.

Reasonably or not, fairly or not, many folks around this country did question whether Justice Scalia could be impartial in a case involving a hunting buddy. It is clear that Justice Scalia's declaration of impartiality did not itself put these questions to rest. To the extent these questions persist, our court system suffers.

This motion to recommit in the new circuits established so that the motion will be in order will establish a process by which the Federal courts can design a procedure where refusals by the judge to recuse himself can be heard by other judges, thereby getting rid of the problem of the appearance of conflict of interest.

I want to make it very clear. I am not coming to the conclusion that Justice Scalia had a conflict of interest; I am coming to the opinion and the conclusion which I believe strongly that someone other than Justice Scalia should be able to make this decision, just like someone other than an accused justice should be able to make the decision about whether or not there has been judicial misconduct.

We are leaving full authority to the Federal courts to design that process, but the notion that there is some appeal, some procedure, some process by which a challenge to the fairness and impartiality of a judge will be heard by someone other than the judge is a necessity.

I urge the adoption of this motion.

Unlike the judicial misconduct statute, the recusal statute currently provides no opportunity to appeal a judge's refusal to recuse himself. My amendment would have simply brought the procedures for addressing recusal and misconduct decisions into line with one another.

Chief Justice Rehnquist himself highlighted this statutory anomaly in a letter to several U.S. Senators. These Senators had expressed concern that Justice Scalia did not recuse himself from a case in which Vice President CHENEY was a named litigant. While this case was pending, Justice Scalia had taken a duck-hunting trip with the Vice President. Not only did they hunt together for several days, but Justice Scalia also traveled with the Vice President aboard Air Force Two.

In a public document explaining his refusal to recuse himself from a case involving his hunting buddy, Justice Scalia wrote that he did not believe ''his impartiality might reasonably be questioned.'' In commenting on Justice Scalia's decision, Chief Justice Rehnquist noted that, ''There is no formal procedure for a Court review of a decision of a Justice in an individual case.''

What I believe about the propriety of Justice Scalia's refusal to recuse himself is unimportant. What is important, however, is the opinion of the American people. The efficacy of our court system depends entirely on the perception that the courts will administer justice impartially. If the courts lose the trust of the people, they lose their only real power.

Reasonably or not, many folks around the country did question whether Justice Scalia could be impartial in a case involving a hunting buddy. It is clear that Justice Scalia's declaration of impartiality did not, itself, put these questions to rest. To the extent these questions persist, our court system suffers.

Mr. SENSENBRENNER. Madam Speaker, I rise in opposition to the motion to recommit.

The SPEAKER pro tempore. The gentleman from Wisconsin (Mr. SENSENBRENNER) is recognized for 5 minutes.

Mr. SENSENBRENNER. Madam Speaker, this is the wrong time, the wrong procedure, and the wrong amendment to deal with what is a very legitimate problem.

If the procedure that was outlined by the gentleman from California's motion to recommit were in place at the time Justice Scalia and Vice President CHENEY went on their duck-hunting trip, the other eight Justices of the Supreme Court would decide whether or not Justice Scalia could vote on the case that Vice President CHENEY was a named litigant in. This can be subject to extreme misuse as people could file complaints again Justices and ask for recusals to take them out and to take their votes out if they felt that the Justices would vote the wrong way.

And the same thing under the gentleman from California's motion to recommit would apply at the district court and the Court of Appeals level, and that is whether a judge's colleagues will determine whether or not a judge has a vote on a piece of litigation that is coming before the court.

□ 1315

Now, I concede the fact that there is a problem that the gentleman from California (Mr. BERMAN) has recognized; but his solution is the wrong solution.

The correct solution is to allow the commission that has been appointed by Chief Justice Rehnquist and which is headed by Justice Steven Bryer, looking into judicial misconduct statutes and how they should be changed to come up with a recommendation that can either be enacted into law by statute or adopted as a rule of civil or criminal procedure.

If legislation is necessary, we should go through the normal legislative process in looking at all of the angles of the proposed solution to make sure that what we are doing is right. I know there is a problem, but the gentleman from California (Mr. BERMAN) is not right. We should allow people to study this more dispassionately and thus vote down the motion to recommit.

I ask for a ''no'' vote.

Madam Speaker, I yield back the balance of my time

The SPEAKER pro tempore (Mrs. BIGGERT). Without objection, the previous question is ordered on the motion to recommit.

There was no objection

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. BERMAN. Madam Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for any electronic vote on the question of passage.

The vote was taken by electronic device, and there were—ayes 190, noes 216, not voting 26, as follows:

[Roll No. 493]

AYES—190

Ackerman	Baca	Becerra
Allen	Baird	Bell
Andrews	Baldwin	Berkley

Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Boucher
Boyd
Brady (PA)
Brown (OH)
Butterfield
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Case
Chandler
Clay
Clyburn
Conyers
Cooper
Costello
Cramer
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley (CA)
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Frost
Gonzalez
Gordon
Green (TX)
Grijalva
Gutierrez
Harman
Herseth
Hill
Hinchey
Hinojosa
Holden
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kleczka
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Lucas (KY)
Lynch
Maloney
Markey
Marshall
Matheson
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNulty
Meehan
Meek (FL)
Menendez
Michaud
Miller, George
Mollohan
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Pelosi
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rodriguez
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Stenholm
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOES—216

Aderholt
Akin
Alexander
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Bonilla
Bonner
Bono
Boozman
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cantor
Capito
Carter
Castle
Chabot
Chocola
Coble
Cole
Collins
Cox
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Dreier
Duncan
Dunn
Ehlers
Emerson
English
Everett
Feeney
Ferguson
Flake
Foley
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Goodlatte
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Houghton
Hulshof
Hunter
Hyde
Issa
Istook
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lucas (OK)
Manzullo
McCotter
McCrery
McHugh
McInnis
McKeon
Mica
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Neugebauer
Ney
Northup
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Porter
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Sullivan
Sweeney
Tancredo
Taylor (NC)
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—26

Abercrombie
Boehlert
Brown, Corrine
Cannon
DeMint
Forbes
Gephardt
Goode
Greenwood
Hastings (FL)
Hoeffel
Isakson
John
Kucinich
Lampson
Majette
Matsui
Meeks (NY)
Millender-McDonald
Nethercutt
Norwood
Payne
Portman
Tauzin
Terry
Weldon (PA)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mrs. BIGGERT) (during the vote). Members are reminded that there are 2 minutes remaining in this vote.

□ 1336

Messrs. DUNCAN, SOUDER and SHAYS changed their vote from ''aye'' to ''no.''

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. ABERCROMBIE. Madam Speaker, in accordance with a leave of absence approved earlier today, I was unavoidably absent from the House. Had I been present, I would have voted as follows:

Rollcall: 490, Previous Question on the rule for S. 878, "no"; 491, Rule for consideration of S. 878, "no"; 492, Simpson Amendment to S. 878, "no"; 493, Motion to recommit S. 878 with instructions, "yes."

The SPEAKER pro tempore. The question is on the passage of the bill.

The bill was passed.

The title of the bill was amended so as to read: ''A bill to create additional Federal court judgeships.''.

A motion to reconsider was laid on the table.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 6 of rule XX.

Record votes on postponed questions will be taken later today.

RECOGNIZING SPIRIT OF JACOB MOCK DOUB AND EXPRESSING SENSE OF CONGRESS THAT ''NATIONAL TAKE A KID MOUNTAIN BIKING DAY'' SHOULD BE ESTABLISHED IN JACOB MOCK DOUB'S HONOR

Mr. BARTON of Texas. Madam Speaker, I move to suspend the rules and agree to the concurrent resolution (H. Con. Res. 480) recognizing the spirit of Jacob Mock Doub and his contribution to encouraging youth to be physically active and fit and expressing the sense of Congress that ''National Take a Kid Mountain Biking Day'' should be established in Jacob Mock Doub's honor.

The Clerk read as follows:

H. CON. RES. 480

Whereas, according to the Centers for Disease Control and Prevention, obesity rates have nearly tripled in adolescents in the United States since 1980;

Whereas overweight adolescents have a 70 percent chance of becoming overweight or obese adults;

Whereas research conducted by the National Institutes of Health indicates that while genetics do play a role in childhood obesity, the large increase in childhood obesity rates over the past few decades can be traced to overeating and lack of sufficient exercise;

Whereas the Surgeon General and the President's Council on Physical Fitness and Sports recommend regular physical activity, including bicycling, for the prevention of overweight and obesity;

Whereas Jacob Mock ''Jack'' Doub, born July 11, 1985, was actively involved in encouraging others, especially children, to ride bicycles;

Whereas Jack Doub, an active youth with an avid interest in the outdoors, was introduced to mountain biking at the age of 11 near Grandfather Mountain, North Carolina, and quickly became a talented cyclist;

Whereas Jack Doub won almost every cross-country race he entered for two years, and between the ages of 14 and 17 became a top national-level downhill and slalom competitor;

Whereas Jack Doub placed second in junior expert dual slalom at the 2002 National Off Road Bicycling Association's National Championship Series at Snowshoe Mountain;

Whereas Jack Doub died unexpectedly from complications related to a bicycling injury on October 21, 2002;

Whereas Jack Doub's family and friends have joined, in association with the International Mountain Bicycling Association, to honor Jack Doub's spirit and love of bicycling by establishing the Jack Doub Memorial Fund to promote and encourage children of all ages to learn to ride and lead a physically active lifestyle;

Whereas the International Mountain Bicycling Association's worldwide network includes 32,000 individual members, more than 450 bicycle clubs, 140 corporate partners, and 240 bicycle retailer members who coordinate