

1 *Keenan*  
 1 *Feland* SENATE BILL NO. 191 *Clayton Burnett*  
 2 INTRODUCED BY *Harding* *Mercer* *HARP* *John* *Bushop*  
 3 *Christiane Emer* *AKLESTAD* *Beal* *Cap*  
 4 *Treit* *Foster* *Swygool* *Watt* *Hein* *Esther* *Foster*  
 5 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF *Joan*  
 5 MONTANA URGING CONGRESS TO DIVIDE THE NINTH JUDICIAL CIRCUIT OF THE UNITED STATES *Hiland*  
 6 COURT OF APPEALS INTO TWO CIRCUITS. *Chambers Van Velskenburg*

7  
 8 WHEREAS, under Article III, section 1, of the United States Constitution, the Congress of the United  
 9 States has plenary power to ordain and establish the federal courts below the Supreme Court level; and  
 10 WHEREAS, in 1988, the 100th Congress created the Federal Courts Study Committee as an ad hoc  
 11 committee within the Judicial Conference of the United States to examine the problems facing the federal  
 12 courts and to develop a long-term plan for the Judiciary; and  
 13 WHEREAS, the Study Committee found that the federal appellate courts are faced with a crisis of  
 14 volume that will continue into the future and that the structure of these courts will require some  
 15 fundamental changes; and  
 16 WHEREAS, the Study Committee did not endorse any one solution but served only to draw  
 17 attention to the serious problems of the courts of appeals; and  
 18 WHEREAS, the Study Committee recommended that fundamental structural alternatives deserve  
 19 the careful attention of Congress and of the courts, bar associations, and scholars over the next 5 years;  
 20 and  
 21 WHEREAS, the problems of the circuit court system and the alternatives for revising the system  
 22 represent a policy choice that requires Congress to weigh costs and benefits and to seek the solution that  
 23 best serves the judicial needs of the nation; and  
 24 WHEREAS, there are 13 judicial circuits of the United States courts of appeals; and  
 25 WHEREAS, Montana is in the Ninth Circuit, which consists of Alaska, Arizona, California, Hawaii,  
 26 Idaho, Montana, Nevada, Oregon, Washington, Guam, and the Northern Mariana Islands; and  
 27 WHEREAS, in 1990, it was estimated that the Ninth Circuit:  
 28 covers nine states and two territories, totaling approximately 14 million square miles; serves a population  
 29 of almost 44 million people, 15 million more than the next largest circuit court and about 20 million more  
 30 than all other courts of appeals; has 28 judges, 12 more than the next largest circuit court and 16 more

1 than the average circuit court; and has a caseload of more than 6,000 appeals, 2,000 larger than the next  
2 largest court of appeals and nearly one-sixth of the total appeals in all the 12 regional courts of appeals;  
3 and

4 WHEREAS, projections are that at the current rate of growth, the Ninth Circuit's 1980 docket of  
5 cases will double before the year 2000; and

6 WHEREAS, statistics reveal that, because of the number of judges in the Ninth Circuit, there are  
7 numerous opportunities for conflicting holdings--one legal scholar has estimated that on a 28-judge court  
8 there are over 3,000 combinations of panels that may decide an issue, without counting senior judges,  
9 district judges, and judges sitting by designation; and

10 WHEREAS, legal scholars have suggested that because the United States Supreme Court reviews  
11 less than 1% of appellate decisions, the concept of regional stare decisis, or adherence to decided cases,  
12 results, in effect, in each court of appeals becoming a junior supreme court with final decision power over  
13 all issues of federal law in each circuit (unless and until reviewed by the Supreme Court); and

14 WHEREAS, the Ninth Circuit has been described as an experiment in judicial administration and a  
15 laboratory in which to test whether the values of a large circuit can be preserved; and

16 WHEREAS, some legal scholars have opposed its division on the grounds that to divide the Ninth  
17 Circuit would be to lose the benefit of an experiment in judicial administration that has not yet run its  
18 course; and

19 WHEREAS, the problems of the Ninth Circuit are immediate and growing and maintaining the court  
20 in its present state is a disservice to the citizens of Montana and other Ninth Circuit states and territories;  
21 and

22 WHEREAS, it is generally understood that an essential element of a federal appellate system must  
23 include guaranteeing regionalized and decentralized review when regional concerns are strongest; and

24 WHEREAS, because of the problems of the Ninth Circuit related to its dimensions of geography,  
25 population, judgeships, docket, and costs, it is desirable for the Northwest states to be placed in a separate  
26 circuit, consisting mainly of contiguous states with common interests; and

27 WHEREAS, the existing circuit boundary lines have been called arbitrary products of history; and

28 WHEREAS, Congress has at least twice divided circuits: in 1929, to separate the new Tenth Circuit  
29 from the Eighth Circuit, and in 1981, to separate the new Eleventh Circuit from the Fifth Circuit; and

30 WHEREAS, Congress, in 1989, considered and is expected, in 1995, to again consider a bill to

1 divide the Ninth Judicial Circuit of the United States Court of Appeals into two circuits--a new Ninth Circuit,  
2 composed of Arizona, California, and Nevada, and a new Twelfth Circuit, composed of Alaska, Hawaii,  
3 Idaho, Montana, Oregon, Washington, Guam, and the Northern Mariana Islands; and

4 WHEREAS, it is the proper function of Congress to determine circuit boundaries and it is desirable  
5 that Montana be included in a regional circuit that will allow relief for its citizens from the problems  
6 occasioned by its inclusion in the present Ninth Circuit.

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8 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE  
9 STATE OF MONTANA:

10 That the Legislature of the State of Montana urge Congress to turn its thoughtful attention to the  
11 passage of legislation that will split the existing Ninth Judicial Circuit of the United States Court of Appeals  
12 into two circuits and that will include Montana in a circuit composed in large part of other Northwest states  
13 with similar regional interests.

14 BE IT FURTHER RESOLVED, that Congress be urged to place a Montana judge on the court of the  
15 new circuit.

16 BE IT FURTHER RESOLVED, that Congress grant this relief and pass this legislation immediately,  
17 regardless of considerations of long-term changes to the appellate system in general.

18 BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the

19 -END-

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7  
8 **SENATE BILL NO. 191 WAS WITHDRAWN**  
9 -END-