

Harding **SENATE** JOINT RESOLUTION NO. 10

INTRODUCED BY HARDING, MERCER, HARP, BAER, EMERSON, BURNETT, BISHOP, GAGE, BECK,
KEATING, TOEWS, HIBBARD, ESTRADA, DEVLIN, BARTLETT, ALKESTAD, SWYSGOOD, EWER,
CHRISTIAENS, FOSTER, TVEIT, CLARK, ZOOK, BROWN, CRIPPEN, BENEDICT, MESAROS, CRISMORE,
VAN VALKENBURG, FELAND, KEENAN

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF
MONTANA URGING CONGRESS TO DIVIDE THE NINTH JUDICIAL CIRCUIT OF THE UNITED STATES
COURT OF APPEALS INTO TWO CIRCUITS.

WHEREAS, under Article III, section 1, of the United States Constitution, the Congress of the United
States has plenary power to ordain and establish the federal courts below the Supreme Court level; and

WHEREAS, in 1988, the 100th Congress created the Federal Courts Study Committee as an ad hoc
committee within the Judicial Conference of the United States to examine the problems facing the federal
courts and to develop a long-term plan for the Judiciary; and

WHEREAS, the Study Committee found that the federal appellate courts are faced with a crisis of
volume that will continue into the future and that the structure of these courts will require some
fundamental changes; and

WHEREAS, the Study Committee did not endorse any one solution but served only to draw
attention to the serious problems of the courts of appeals; and

WHEREAS, the Study Committee recommended that fundamental structural alternatives deserve
the careful attention of Congress and of the courts, bar associations, and scholars over the next 5 years;
and

WHEREAS, the problems of the circuit court system and the alternatives for revising the system
represent a policy choice that requires Congress to weigh costs and benefits and to seek the solution that
best serves the judicial needs of the nation; and

WHEREAS, there are 13 judicial circuits of the United States courts of appeals; and

WHEREAS, Montana is in the Ninth Circuit, which consists of Alaska, Arizona, California, Hawaii,
Idaho, Montana, Nevada, Oregon, Washington, Guam, and the Northern Mariana Islands; and

WHEREAS, in 1990, it was estimated that the Ninth Circuit:

1 covers nine states and two territories, totaling approximately 14 million square miles; serves a population
2 of almost 44 million people, 15 million more than the next largest circuit court and about 20 million more
3 than all other courts of appeals; has 28 judges, 12 more than the next largest circuit court and 16 more
4 than the average circuit court; and has a caseload of more than 6,000 appeals, 2,000 larger than the next
5 largest court of appeals and nearly one-sixth of the total appeals in all the 12 regional courts of appeals;
6 and

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

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

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

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

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

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

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

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

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

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

3 WHEREAS, Congress, in 1989, considered and is expected, in 1995, to again consider a bill to
4 divide the Ninth Judicial Circuit of the United States Court of Appeals into two circuits--a new Ninth Circuit,
5 composed of Arizona, California, and Nevada, and a new Twelfth Circuit, composed of Alaska, Hawaii,
6 Idaho, Montana, Oregon, Washington, Guam, and the Northern Mariana Islands; and

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

10
11 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE
12 STATE OF MONTANA:

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

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

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

21 BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the
22 Secretary of the United States Senate, the Clerk of the United States House of Representatives, and the
23 members of Montana's Congressional Delegation.

24 -END-

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8 MONTANA URGING CONGRESS TO DIVIDE THE NINTH JUDICIAL CIRCUIT OF THE UNITED STATES
9 COURT OF APPEALS INTO TWO CIRCUITS; AND URGING THE PRESIDENT OF THE UNITED STATES TO
10 PLACE A MONTANA JUDGE ON THE FEDERAL CIRCUIT COURT FOR MONTANA.
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12 WHEREAS, under Article III, section 1, of the United States Constitution, the Congress of the United
13 States has plenary power to ordain and establish the federal courts below the Supreme Court level; and

14 WHEREAS, in 1988, the 100th Congress created the Federal Courts Study Committee as an ad hoc
15 committee within the Judicial Conference of the United States to examine the problems facing the federal
16 courts and to develop a long-term plan for the Judiciary; and

17 WHEREAS, the Study Committee found that the federal appellate courts are faced with a crisis of
18 volume that will continue into the future and that the structure of these courts will require some
19 fundamental changes; and

20 WHEREAS, the Study Committee did not endorse any one solution but served only to draw
21 attention to the serious problems of the courts of appeals; and

22 WHEREAS, the Study Committee recommended that fundamental structural alternatives deserve
23 the careful attention of Congress and of the courts, bar associations, and scholars over the next 5 years;
24 and

25 WHEREAS, the problems of the circuit court system and the alternatives for revising the system
26 represent a policy choice that requires Congress to weigh costs and benefits and to seek the solution that
27 best serves the judicial needs of the nation; and

28 WHEREAS, there are 13 judicial circuits of the United States courts of appeals; and

29 WHEREAS, Montana is in the Ninth Circuit, which consists of Alaska, Arizona, California, Hawaii,
30 Idaho, Montana, Nevada, Oregon, Washington, Guam, and the Northern Mariana Islands; and

1 WHEREAS, in 1990, it was estimated that the Ninth Circuit: covers nine states and two territories,
2 totaling approximately 14 million square miles; serves a population of almost 44 million people, 15 million
3 more than the next largest circuit court and about 20 million more than all other courts of appeals; has 28
4 judges, 12 more than the next largest circuit court and 16 more than the average circuit court; and has a
5 caseload of more than 6,000 appeals, 2,000 larger than the next largest court of appeals and nearly
6 one-sixth of the total appeals in all the 12 regional courts of appeals; and

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

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

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

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

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

22 WHEREAS, the problems of the Ninth Circuit are immediate and growing and maintaining the court
23 in its present state is a disservice to the citizens of Montana and other Ninth Circuit states and territories;
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25 WHEREAS, it is generally understood that an essential element of a federal appellate system must
26 include guaranteeing regionalized and decentralized review when regional concerns are strongest; and

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

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

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

3 WHEREAS, Congress, in 1989, considered and is expected, in 1995, to again consider a bill to
4 divide the Ninth Judicial Circuit of the United States Court of Appeals into two circuits--a new Ninth Circuit,
5 composed of Arizona, California, and Nevada, and a new Twelfth Circuit, composed of Alaska, Hawaii,
6 Idaho, Montana, Oregon, Washington, Guam, and the Northern Mariana Islands; and

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

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

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

17 BE IT FURTHER RESOLVED, that ~~Congress~~ THE PRESIDENT OF THE UNITED STATES be urged to
18 place a Montana judge on the FEDERAL CIRCUIT court ~~of the new circuit~~ FOR MONTANA.

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

21 BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the
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17 WHEREAS, the Study Committee found that the federal appellate courts are faced with a crisis of
18 volume that will continue into the future and that the structure of these courts will require some
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21 attention to the serious problems of the courts of appeals; and

22 WHEREAS, the Study Committee recommended that fundamental structural alternatives deserve
23 the careful attention of Congress and of the courts, bar associations, and scholars over the next 5 years;
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25 WHEREAS, the problems of the circuit court system and the alternatives for revising the system
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7 WHEREAS, projections are that at the current rate of growth, the Ninth Circuit's 1980 docket of
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