

115TH CONGRESS
1ST SESSION

S. _____

To amend title 28, United States Code, to divide the ninth judicial circuit of the United States into 2 circuits, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. FLAKE (for himself and Mr. MCCAIN) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend title 28, United States Code, to divide the ninth judicial circuit of the United States into 2 circuits, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Judicial Administra-
5 tion and Improvement Act of 2017”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **FORMER NINTH CIRCUIT.**—The term
9 “former ninth circuit” means the ninth judicial cir-

1 cuit of the United States as in existence on the day
2 before the effective date of this Act.

3 (2) NEW NINTH CIRCUIT.—The term “new
4 ninth circuit” means the ninth judicial circuit of the
5 United States established by the amendment made
6 by section 3.

7 (3) TWELFTH CIRCUIT.—The term “twelfth cir-
8 cuit” means the twelfth judicial circuit of the United
9 States established by the amendment made by sec-
10 tion 3.

11 **SEC. 3. NUMBER AND COMPOSITION OF CIRCUITS.**

12 Section 41 of title 28, United States Code, is amend-
13 ed—

14 (1) in the matter preceding the table, by strik-
15 ing “thirteen” and inserting “fourteen”; and

16 (2) in the table—

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

“Ninth California, Hawaii, Oregon, Guam,
Northern Mariana Islands.”;

19 and

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

“Twelfth Alaska, Arizona, Idaho, Montana, Ne-
vada, Washington.”.

1 **SEC. 4. NUMBER OF CIRCUIT JUDGES.**

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

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

“Ninth 19”;

6 and

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

“Twelfth 10”.

9 **SEC. 5. PLACES OF CIRCUIT COURT.**

10 The table contained in section 48(a) of title 28,
11 United States Code, is amended by inserting after the
12 item relating to the eleventh circuit the following:

“Twelfth Phoenix, Anchorage, Missoula, Se-
attle.”.

13 **SEC. 6. ELECTION OF ASSIGNMENT OF CIRCUIT JUDGES.**

14 (a) IN GENERAL.—Each circuit judge of the former
15 ninth circuit who is in regular active service and whose
16 official duty station on the day before the effective date
17 of this Act—

18 (1) is in California, Oregon, Guam, Hawaii, or
19 the Northern Mariana Islands shall be a circuit
20 judge of the new ninth circuit as of such effective
21 date; and

22 (2) subject to subsection (b), is in Alaska, Ari-
23 zona, Idaho, Montana, Nevada, or Washington shall

1 be a circuit judge of the twelfth circuit as of such
2 effective date.

3 (b) **ELECTION BY CERTAIN CIRCUIT JUDGES.**—A cir-
4 cuit judge in regular active service as described in sub-
5 section (a)(2) may elect to be permanently assigned to the
6 new ninth circuit as of such effective date by notifying
7 the Director of the Administrative Office of the United
8 States Courts of such election.

9 (c) **VACANCIES.**—For each individual serving in the
10 position of circuit judge of the former ninth circuit whose
11 official duty station on the day before the effective date
12 of this Act is in Alaska, Arizona, Idaho, Montana, Nevada,
13 or Washington after the date on which such individual
14 ceases to serve as an active circuit judge, the President
15 shall appoint, by and with the advice and consent of the
16 Senate, 1 additional circuit judge for the twelfth circuit,
17 without regard to whether such individual makes an elec-
18 tion described in subsection (b).

19 **SEC. 7. ELECTION OF ASSIGNMENT BY SENIOR JUDGES.**

20 Each judge who is a senior circuit judge of the former
21 ninth circuit, whose official duty station on the day before
22 the effective date of this Act is in Alaska, Arizona, Idaho,
23 Montana, Nevada, or Washington may elect to be assigned
24 to the new ninth circuit or the twelfth circuit as of such

1 effective date and shall notify the Director of the Adminis-
2 trative Office of the United States Courts of such election.

3 **SEC. 8. AUTHORIZATION OF TEMPORARY JUDGESHIPS.**

4 (a) IN GENERAL.—For each circuit judge in regular
5 active service who elects to be assigned to the new ninth
6 circuit under section 6(b), the President shall appoint, by
7 and with the advice and consent of the Senate, 1 addi-
8 tional circuit judge for the twelfth circuit, resident in the
9 duty station of the circuit judge making the election as
10 of the day before the effective date of this Act.

11 (b) VACANCIES.—For each appointment made under
12 subsection (a) for the twelfth circuit, an equal number of
13 corresponding vacancies in the position of circuit judge for
14 the twelfth circuit shall not be filled.

15 **SEC. 9. SENIORITY OF JUDGES.**

16 (a) IN GENERAL.—The seniority of each judge—

17 (1) who elects to be assigned to the twelfth cir-
18 cuit under section 6(a)(2);

19 (2) who elects to be assigned to the new ninth
20 circuit under section 6(b);

21 (3) who elects to be assigned to the twelfth cir-
22 cuit under section 7; or

23 (4) who is assigned to the new ninth circuit
24 under section 6(a)(1),

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

3 (b) TEMPORARY TWELFTH CIRCUIT JUDGES.—The
4 seniority of each judge appointed under section 8(a) shall
5 run from the date of commission of such judge as a judge
6 of the twelfth circuit.

7 **SEC. 10. APPLICATION TO CASES.**

8 The following apply to any case in which, on the day
9 before the effective date of this Act, an appeal or other
10 proceeding has been filed with the former ninth circuit:

11 (1) Except as provided in paragraph (3), if the
12 matter has been submitted for decision, further pro-
13 ceedings with respect to the matter shall be had in
14 the same manner and with the same effect as if this
15 Act had not been enacted.

16 (2) If the matter has not been submitted for de-
17 cision, the appeal or proceeding, together with the
18 original papers, printed records, and record entries
19 duly certified, shall, by appropriate orders, be trans-
20 ferred to the court to which the matter would have
21 been submitted had this Act been in full force and
22 effect on the date on which such appeal was taken
23 or other proceeding commenced, and further pro-
24 ceedings with respect to the case shall be had in the
25 same manner and with the same effect as if the ap-

1 peal or other proceeding had been filed in such
2 court.

3 (3) If a petition for rehearing en banc is pend-
4 ing on or after the effective date of this Act, the pe-
5 tition shall be considered by the court of appeals to
6 which the petition would have been submitted had
7 this Act been in full force and effect on the date on
8 which the appeal or other proceeding was filed with
9 the court of appeals.

10 **SEC. 11. PRECEDENT.**

11 Precedent from the former ninth circuit shall not be
12 binding on the twelfth circuit. Precedent from any circuit,
13 including the former and new ninth circuits, shall be per-
14 suasive authority only.

15 **SEC. 12. ADMINISTRATION.**

16 (a) IN GENERAL.—The court of appeals for the ninth
17 circuit as constituted on the day before the effective date
18 of this Act may take such administrative action as may
19 be required to carry out this Act and the amendments
20 made by this Act.

21 (b) ADMINISTRATIVE TERMINATION.—The court de-
22 scribed in subsection (a) shall cease to exist for adminis-
23 trative purposes at the end of the second calendar year
24 following the effective date of this Act.

1 **SEC. 13. EFFECTIVE DATE.**

2 This Act and the amendments made by this Act shall
3 take effect at the beginning of the next calendar year after
4 the date of enactment of this Act.

5 **SEC. 14. AUTHORIZATION OF APPROPRIATIONS.**

6 There are authorized to be appropriated such sums
7 as may be necessary to carry out this Act and the amend-
8 ments made by this Act, including such sums as may be
9 necessary to provide appropriate space and facilities for
10 any judicial positions created by this Act or an amendment
11 made by this Act.