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HOUSE OF REPRESENTATIVES
REPORT
108–708

AUTHORIZATION FOR ADDITIONAL FEDERAL JUDGESHIPS

SEPTEMBER 29, 2004.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. Sensenbrenner, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany S. 878]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (S. 878) to authorize an additional permanent judgeship in the district of Idaho, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

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THE AMENDMENTS

The amendments are as follows:
Strike all after the enacting clause 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.
(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) 1 additional district judge for the district of Utah.
(18) 2 additional district judges for the eastern district of Virginia.
(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 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 ..... 33".

Amend the title so as to read:

A bill to create additional Federal court judgeships.

PURPOSE AND SUMMARY

The purpose of S. 878, as reported by the Committee on the Judiciary, is to authorize the creation of certain new U.S. circuit and district judgeships (permanent as well as temporary) and to convert other temporary judgeships to permanent status.

BACKGROUND AND NEED FOR THE LEGISLATION

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.

Based on these criteria, the Conference's current proposal recommends that Congress establish 11 new judgeships in 4 courts of appeals 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. For many of these courts, the recommendations represent needs developed since 1990.

HEARINGS

The Committee's Subcommittee on Courts, the Internet, and Intellectual Property held an oversight hearing on Federal judgeship needs on June 24, 2003. Testimony was received from three witnesses representing two organizations.

COMMITTEE CONSIDERATION

On September 9, 2004, the Committee met in open session and ordered favorably reported the bill S. 878 with amendments by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee notes that there were no recorded votes during the Committee's consideration of S. 878.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee notes that this legislation provides new budgetary authority as outlined in the Congressional Budget Office estimate printed in the next section.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, S. 878, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 29, 2004.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 878, an act to create additional federal court judgeships.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Rachel Milberg, who can be reached at 226–2860.

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

S. 878—An act to create additional federal court judgeships.

SUMMARY

S. 878 would authorize 47 additional district court judges and 11 additional circuit court judges. Based on information from the Administrative Office of the United States Courts (AOUSC), CBO estimates that implementing the act would cost $225 million over the 2005–2009 period for court staff salaries and benefits, supplies, security, and the rent or construction of office space to support the additional 58 judges. We also estimate that enacting the legislation would increase direct spending by $3 million in 2005, by $40 million over the 2006–2009 period, and by $90 million over the 2006–2014 period for the salaries and benefits of the judges that would

be authorized by the act. Enacting S. 878 would not affect revenues.

S. 878 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on State, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of S. 878 is shown in the following table. The costs of this legislation fall within budget function 750 (administration of justice).

By Fiscal Year, in Millions of Dollars

	2005	2006	2007	2008	2009
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Budget Authority	8	87	42	43	45
Estimated Outlays	8	52	70	50	45
CHANGES IN DIRECT SPENDING					
Estimated Budget Authority	3	7	10	10	10
Estimated Outlays	3	7	10	10	10

BASIS OF ESTIMATE

CBO estimates that enacting S. 878 would increase direct spending by $90 million over the next 10 years for salaries and benefits of the additional district and circuit court judges that would be authorized by the legislation. In addition, we estimate that implementing the act would cost $225 million over the 2005–2009 period for court staff salaries and benefits, supplies, security, and the rent or construction of office space to support the 58 additional judges, subject to appropriation of the necessary amounts. For this estimate, CBO assumes that all judges authorized under the bill would be approved by the beginning of fiscal year 2007.

Direct Spending

S. 878 would authorize 47 additional district court judges and 11 additional circuit court judges. Because the salaries and benefits of such judges are considered mandatory, adding more judges would increase direct spending. Under current law, district judges receive $158,100 and circuit court judges receive 167,600 annually. CBO estimates that enacting the legislation would increase direct spending by $3 million in 2005, $7 million in 2006, and $10 million each year thereafter for the salaries and benefits of the additional 58 judges that would be authorized under the act. Adjustments in the annual salary for judges is subject to future Congressional action.

Spending Subject to Appropriation

CBO expects that each additional judge authorized by this legislation would require the same amount of staff support, supplies, security, and office space as current district and circuit court judges consume. Based on information from the AOUSC, CBO estimates the courts would need to hire an average of five support staff for each judge, construct expanded court facilities, and rent larger office space to accommodate the additional judges and staff. In addition, the courts would be required to conduct background checks, purchase lawbook subscriptions and furniture, and expand tele-

phone systems. CBO estimates that implementing the legislation would cost $225 million over the 2005–2009 period, and $473 million over the 2004–2014 period, subject to appropriation of the necessary amounts.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

S. 878 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on State, local, or tribal governments.

PREVIOUS CBO ESTIMATE

On June 26, 2003, CBO transmitted a cost estimate for S. 878 as passed by the Senate on May 22, 2003. The Senate version of this act would 14 additional district court judges and 36 additional bankruptcy judges, and the cost estimates reflect this difference.

ESTIMATE PREPARED BY:

Federal Costs: Rachel Milberg (226–2860)
Impact on State, Local, and Tribal Governments: Melissa Merrell (225–3220)
Impact on the Private Sector: Paige Piper/Bach (226–2960)

ESTIMATE APPROVED BY:

Peter H. Fontaine
Deputy Assistant Director for Budget Analysis

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, S. 878 should facilitate an increase in the number of cases and appeals terminated on the merits as well as a reduction in pendency times for outstanding cases and appeals. The Committee also expects that the averages governing weighted filings per judgeship for district courts and adjusted case filings per panel for circuit courts will more closely approximate the current Conference standards (430 for district courts, 500 for circuit courts). If S. 878 is enacted, the Committee will closely monitor the data that measures these performance goals and objectives for the Federal judiciary.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee find the authority for this legislation in article III, § 1 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

The following discussion describes the bill as reported by the Committee.

Sec. 1. New District Judgeships. Section 1 creates the following permanent U.S. district judgeships.

Northern District of Alabama (one permanent). Weighted filings in this district have remained above the Conference standard of 430 for several years and are now at 620 per judgeship. Civil rights

cases account for nearly one-third of its civil cases, and state prisoner petitions have increased by 29% since 1998. Three years ago, the four senior judges serving the district handled more than a fifth of the caseload; all four are in their seventies.

Middle District of Alabama (one permanent). Weighted filings for the Middle District have remained above 500 per judgeship for several years and now stand at 564. Civil filings rank sixth nationally. No senior judges in this court regularly take cases, and the court indicates that the judge who recently took senior status will handle no more than 75 civil cases per year.

District of Arizona (three permanent). The court's current weighted filings, at 608 per judgeship, are ranked 13th nationally. Total filings have increased steadily over the past several years and have risen 28% since 1997. The district has the fourth highest criminal caseload in the nation, two-thirds of which relate to drug and immigration prosecutions. In addition, the district has five senior judges whose ages range from 68 to 83. Three of these judges will retire or significantly reduce their caseloads in the near future.

Northern District of California (one permanent). Weighted filings in the Northern District currently exceed 500 per judgeship, driven by a high number of securities filings, higher than average multidefendant cases, and a reduction in senior judges. Of the seven senior judges, one only handles circuit cases, two have since retired, and the remaining four range in age from 68 to 80.

Eastern District of California (three permanent). Weighted filings in this district have averaged more than 600 per judgeship since 1997 and currently stand at 614. Civil filings per judgeship are the fourth highest nationally and the criminal caseload increased 65% between 1993 and 1997. Five senior judges assist the court and close more than a quarter of all cases. Four of the five are 70 or older.

Central District of California (one permanent). The Central District's weighted filings exceed 500 per judgeship. The District ranks ninth nationally in civil filings per judgeship, and firearms cases have more than doubled since 1999. Vacant judgeship months have remained high in the recent past. Four of the senior judges are over 80, and three active judges are now eligible for senior status.

Southern District of California (two permanent). The court has the highest overall caseload, criminal filings, and supervised release hearings per judgeship nationwide, in addition to the heaviest weighted filings per judgeship (1,068). Of the five senior judges who serve the district, four range in age from 70 to 88 and the fifth recently became inactive.

Middle District of Florida (two permanent). The court's weighted filings far exceed the Conference standard of 430. During the mid to late 1990's, filings in the Middle District grew at a rate of 29% for civil disputes and 34% for criminal cases. Six senior judges, ranging in age from 67 to 86, closed 11% of the court's cases. Two of the senior judges may retire within the next 2 years.

Southern District of Florida (four permanent). Weighted filings for the Southern District average 657 per judgeship, the eighth highest total nationally. Overall filings have risen 78% since 1994, and civil and criminal filings remain well above the respective national averages. Vacancies have harmed court operations in the

past, and the five senior judges, each in his seventies, carries a significant caseload.

District of Idaho (one permanent). Weighted filings per judgeship in Idaho have increased by 58% since 1995 and stand at 504 per judgeship. The court has no senior judges and one of the two active judges is eligible for senior status. The court has also stated that the distance judges are required to travel from duty stations to divisional offices has a substantial impact on their ability to fulfill their obligations.

Western District of Missouri (one permanent). The Western District's weighted filings total 581 per judgeship. Increased civil rights cases and firearms and drug prosecutions have offset declines in prisoner petitions, student loan cases, and Social Security filings. Only two of the five senior judges who assist the court take cases and both are over 75.

District of Nebraska (one permanent). Weighted filings per judgeship stood at 492 (14% higher than the Conference threshold) but have increased to 656 following expiration of the temporary judgeship earlier this year. The two senior judges serving the district (ages 76 and 77) closed 18% of all cases terminated in 2001. One of the court's active judges, who is seriously ill, is eligible to take senior status this year.

District of New Mexico (two permanent). Weighted filings for the District are the fourth highest nationally (739 per judgeship). Caseload growth continues to rise, fueled almost exclusively by immigration prosecutions. Of the two senior judges, one is 90 and has greatly reduced his caseload. Two active judges are eligible to take senior status.

Eastern District of New York (three permanent). The current total of 792 pending cases per judgeship is the third highest nationally—69% above average. The majority of the increase in overall filings in the district has occurred in the civil docket, including student-loan recoveries, asbestos litigation, and cable television theft disputes. Five senior judges closed 32% of the most recently surveyed caseload; however, four are at least 77 years old and the fifth is 67.

District of Oregon (one permanent). Oregon has experienced eight consecutive years of weighted filings either near or above 500 per judgeship (the current figure is 539). An additional permanent judgeship would reduce the figure to 462 per judgeship, still well above the Conference standard. Five senior judges assist the court but they are all in their mid to late seventies and will accept declining caseloads in the future.

District of South Carolina (one permanent). Weighted filings per judgeship for South Carolina (currently 549) have remained well above the Conference standard for years. There was a significant jump in 2001 tort filings when multiple plaintiffs (1,200) were required to file individual suits against a fertilizer plant. The district's three senior judges terminated 11% of the most-recently evaluated caseload, but two of them are 80 or older while two active judges are eligible for senior status.

District of Utah (one permanent). Utah's weighted filings per judgeship have increased 65% since June 1996 to 521, largely due to dramatic increases in criminal filings that have tripled during that time. The court's four senior judges closed 23% of all cases ter-

minated in September 2002. In addition, one of the full-time Magistrate judges assigned to the Salt Lake City office recently died.

Eastern District of Virginia (two permanent). The court's current total of 636 weighted filings per judgeship includes thousands of asbestos cases. Excluding these cases, weighted filings have risen steadily over the past decade and currently stand at 553 per judgeship. The court has three senior judges (ranging in age from 69 to 79), one of whom takes only a half a caseload.

Western District of Washington (one permanent). The Western District's weighted filings average 534 per judgeship, nearly 25% above the Conference standard. The criminal caseload has fluctuated considerably more than overall filings during the past 6 years. Four senior judges serve the court, but only two take a significant number of cases.

Sec. 2. Conversion of Temporary to Permanent Judgeships. Section 2 converts the following temporary judgeships to permanent judgeships.

District of Hawaii (one temporary to permanent). Weighted filings in the District stand at 426 per judgeship but would escalate to more than 500 per judgeship if the temporary seat expires. The court has two senior judges, ages 70 and 86, the older of whom is likely to retire shortly. Together they closed 18% of all cases in 2001.

District of Kansas (one temporary to permanent). Weighted filings will rise to 485 per judgeship in the District if the temporary seat expires. There are five senior judges ranging in age from 70 to 95 (three are at least 80). All of the senior judges carry a heavy caseload but have experienced health problems in recent years that will require them to cut back.

Eastern District of Missouri (one temporary to permanent). The current weighted filings average of 434 would increase to 496 per judgeship if the judgeship expires. The District features one senior judge (age 75) and an expansive growth in criminal filings, many of which are firearms cases.

Sec. 3. Temporary Judgeships. Section 3 creates the following temporary judgeships.

Northern District of California (one temporary). See section 1 profile.

Central District of California (two temporary). See section 1 profile.

Southern District of California (three temporary). See section 1 profile.

District of Colorado (one temporary). Weighted filings in Colorado have remained near or above 500 per judgeship for almost 10 years and currently stand at 495 per judgeship. In recent years there has been a threefold rise in firearms prosecutions. The three senior judges serving the court closed 40% of civil cases in 2001 but only a small proportion of criminal terminations. While this level of senior judge assistance is substantial, it will probably decline as the one judge currently eligible to take senior status has indicated he does not plan to do so and no other active judge becomes eligible until 2008.

Middle District of Florida (one temporary). See section 1 profile.

Northern District of Illinois (one temporary). Weighted filings in the Northern District have steadily increased since 1993 and now stand at 491 per judgeship. Recent growth in civil caseload is attributable to an escalation in student loan, foreclosure, and labor law filings. Nine senior judges disposed of 16% of those cases terminated in 2001.

Northern District of Indiana (one temporary). The caseload in the Northern District increased sharply between 1998 and 2001 and weighted filings are well above 500 per judgeship. Drug and firearms prosecutions have driven the criminal docket in recent years; asbestos litigation, the civil docket. The court has not received senior judge assistance since 1998, but three active judges are eligible to take senior status.

Southern District of Indiana (one temporary). Civil filings in the Southern District rank second nationally and weighted filings, currently 596 per judgeship, continue to rise. The construction of a new Federal penitentiary in Terre Haute that will house 1,100 inmates in 2005 should generate additional prison petitions as well as employment and other disputes. The court's lone senior judge is 88.

Northern District Iowa (one temporary). This district's high weighted filings per judgeship (555) is attributable to increased criminal filings, a high trial rate, and an even higher number of contested sentencing hearings per judgeship. The district has only two authorized judgeships, but one has been vacant since February 2002. The two senior judges, ages 78 and 82, terminated nearly one-fifth of all civil and criminal cases in 2001.

District of New Mexico (one temporary). See section 1 profile.

Eastern District of New York (one temporary). See section 1 profile.

Western District of New York (one temporary). The Western District has the eighth highest pending caseload nationally and a weighted filings average of 539 per judgeship. The recent surge in filings is a function of criminal prosecutions for fraud, drug, and firearms cases. Two of the court's three senior judges take more than half of an active judge's civil and criminal caseload, while the third accepts no criminal and two-thirds of a civil caseload.

Sec. 4. Conforming Amendments. Section 4 amends the table contained in § 133 of title 28 of the U.S. Code that lists the total number of judges for each U.S. district to reflect the changes made by §§ 1 and 2 of S. 878.

Sec. 5. Additional Circuit Judges. Section 5 creates the following circuit judgeships and amends § 44(a) of title 28 of the U.S. Code that lists the total number of judges for each circuit to reflect the changes made by S. 878.

1st Circuit (1 permanent). Adjusted filings average 638 per panel but would drop to 533 with the addition of one judgeship and the anticipated reduction in petitions filed to protest the military use of the Viequez practice bombing site in Puerto Rico. The majority of the circuit's appeals are criminal cases and prisoner petitions. Five senior judges, ranging in age from 70 to 83, participated in 23% of cases terminated.

2nd Circuit (2 permanent). Adjusted filings in the circuit exceed 700 per panel and would only fall to 614 (still well above the Conference standard) if the two judgeships are authorized. Non-prisoner civil petitions still constitute a plurality of appellate filings. Nine senior judges (ranging in age from 67 to 87) assist the court and assume roughly a half of a full caseload. Two active judges are eligible to take senior status and two more will become eligible in 2005.

6th Circuit (1 permanent). The addition of an additional permanent judgeship would still leave the circuit's adjusted filings average per panel (553) above the Conference standard. Prisoner petitions typically constitute one-third of all appeals filed. Half (eight) of the circuit's judgeships are vacant. There are 10 senior judges who assist the court, ranging in age from 66 to 81.

9th Circuit (five permanent, two temporary). Filings in the circuit have increased steadily in recent years. The adjusted filings average stands at 807 per panel, more than 50% above the Conference standard. Immigration, drug, and fraud cases have driven much of the increased workload. Four of the 28 authorized judgeships are vacant. Twenty-one senior judges, most of whom are 75 or older, participate in roughly one-fifth of the appeals closed after oral hearing or submission on briefs. If authorized, the additional judgeships requested would still leave the adjusted filings average at 572 per panel.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 28, UNITED STATES CODE

* * * * * * *

PART I—ORGANIZATION OF COURTS

* * * * * * *

CHAPTER 3—COURTS OF APPEALS

* * * * * * *

§ 44. Appointment, tenure, residence and salary of circuit judges

(a) The President shall appoint, by and with the advice and consent of the Senate, circuit judges for the several circuits as follows:

Circuits	Number of Judges
District of Columbia	12
[First	6
[Second	13]
First	7

Second *15*

* * * * * * *

[Sixth ..... 16]
Sixth *17*

* * * * * * *

[Ninth ..... 28]
Ninth *33*

* * * * * * *

* * * * * * *

CHAPTER 5—DISTRICT COURTS

§ 133. Appointment and number of district judges

(a) The President shall appoint, by and with the advice and consent of the Senate, district judges for the several judicial districts, as follows:

Districts	Judges
[Alabama:	
[Northern	7
[Middle	3
[Southern	3]
Alabama:	
Northern	*8*
Middle	*4*
Southern	*3*
* * * * * * *	
[Arizona	12]
Arizona	*15*
* * * * * * *	
[California:	
[Northern	14
[Eastern	6
[Central	27
[Southern	13]
California:	
Northern	*15*
Eastern	*10*
Central	*28*
Southern	*15*
* * * * * * *	
[Florida:	
[Northern	4
[Middle	15
[Southern	17]
Florida:	
Northern	*4*
Middle	*17*
Southern	*21*
* * * * * * *	
[Hawaii	3
[Idaho	2]
Hawaii	*4*
Idaho	*3*
* * * * * * *	
[Kansas	5]
Kansas	*6*
* * * * * * *	
[Missouri:	
[Eastern	6
[Western	5

[Eastern and Western ..... 2]
Missouri:
Eastern *7*
Western *5*
Eastern and Western *2*

* * * * * * *

[Nebraska ..... 3]
Nebraska *4*

* * * * * * *

[New Mexico 6
[New York:
[Northern 5
[Southern 28
[Eastern 15
[Western ..... 4]
New Mexico *8*
New York:
Northern *5*
Southern *28*
Eastern *18*
Western *4*

* * * * * * *

[Oregon ..... 6]
Oregon *7*

* * * * * * *

[South Carolina ..... 10]
South Carolina *11*

* * * * * * *

[Utah ..... 5]
Utah *6*

* * * * * * *

[Virginia:
[Eastern 11
[Western 4
[Washington:
[Eastern 4
[Western ..... 7]
Virginia:
Eastern *13*
Western *4*
Washington:
Eastern *4*
Western *8*

* * * * * * *

AGENCY VIEWS

JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

LEONIDAS RALPH MECHAM
Secretary

September 17, 2004

Honorable F. James Sensenbrenner, Jr.
Chairman, Committee on the Judiciary
United States House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515-6216

Dear Mr. Chairman:

On behalf of the Judicial Conference of the United States, I want to express our sincere appreciation for the recent action taken by the House Judiciary Committee to report the federal judgeship bill, S. 878, favorable for passage. As you are aware, this bill, as amended, closely tracks the Conference's 2003 Judgeship Recommendations for the federal judiciary. We strongly support this legislation, and we urge its prompt passage.

As reported by your Committee, S. 878 contains 11 new federal circuit court judgeships (9 permanent and 2 temporary), 47 new federal district court judgeships (32 permanent and 15 temporary), and provides for the conversion of 4 temporary district judgeships into permanent judgeships. These judgeships are urgently needed. Despite efforts to deploy judges with maximum effectiveness, current workload needs cannot be met with current resources.

In his testimony last year before the House Judiciary Committee's Subcommittee on Courts, the Internet, and Intellectual Property, Judge Dennis Jacobs, Chair of the Conference Committee on Judicial Resources, stated that the "Conference does not recommend (or wish) indefinite growth in the number of judges. The *Long Range Plan for the Federal Courts* (Recommendation 15) recognizes that growth in the judiciary must be carefully limited to the number of new judgeships that are necessary to exercise federal court jurisdiction. However, as long as federal court jurisdiction continues to expand, there must be a sufficient number of judges to properly serve litigants and justice." In fact, in an effort to implement that policy, we have requested far fewer judgeships than the caseload increases would suggest are now required. Thus, those judgeships that we have requested, as reflected in your version of S. 878, are vital to the health of our federal courts.

Thank you for your support of these new judgeships contained in S. 878. Representatives of the Conference and personnel of the Administrative Office of the United States Courts will provide whatever assistance you may request in connection with this legislation.

Sincerely,

Leonidas Ralph Mecham
Secretary

cc: Honorable John Conyers, Jr.
Members, Committee on the Judiciary

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, SEPTEMBER 9, 2004

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:10 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr., [Chairman of the Committee] presiding.

Chairman SENSENBRENNER. The Committee will be in order. A working quorum is present.

Pursuant to notice I now call up the bill S. 878, a bill to authorize an additional permanent judgeship in the District of Idaho and for other purposes, for purposes of markup, and move its favorable recommendation to the House.

Without objection the bill will be considered as read and open for amendment at any point.

[The bill, S. 878 follows:]

I

108TH CONGRESS
1ST SESSION

S. 878

IN THE HOUSE OF REPRESENTATIVES

JUNE 2, 2003
Referred to the Committee on the Judiciary

AN ACT

To authorize an additional permanent judgeship in the district of Idaho, and for other purposes.

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

SECTION 1. DISTRICT JUDGESHIP FOR THE NORTHERN DISTRICT OF ALABAMA.

(a) ADDITIONAL PERMANENT DISTRICT JUDGESHIP.—The President shall appoint, by and with the advice and consent of the Senate, 1 additional district judge for the northern district of Alabama.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table under section 133(a) of title 28, United States Code, is amended by striking the item relating to Alabama and inserting the following:

"Alabama:
Northern 8
Middle 3
Southern ..... 3.".

SEC. 2. DISTRICT JUDGESHIPS FOR THE DISTRICT OF ARIZONA.

(a) ADDITIONAL PERMANENT DISTRICT JUDGESHIPS.—The President shall appoint, by and with the advice and consent of the Senate, 2 additional district judges for the district of Arizona.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table under section 133(a) of title 28, United States Code, is amended by striking the item relating to Arizona and inserting the following:

"Arizona ..... 14.".

SEC. 3. DISTRICT JUDGESHIPS FOR THE EASTERN AND SOUTHERN DISTRICTS OF CALIFORNIA.

(a) ADDITIONAL PERMANENT DISTRICT JUDGESHIPS.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 3 additional district judges for the eastern district of California; and

(2) 1 additional district judge for the southern district of California.

(b) CONVERSION OF TEMPORARY JUDGESHIP TO PERMANENT JUDGESHIP.—The existing judgeship for the eastern district of California 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 enactment of this Act, be authorized under section 133 of title 28, United States Code, and the incumbent in that office shall hold the office under section 133 of title 28, United States Code (as amended by this Act).

(c) TECHNICAL AND CONFORMING AMENDMENT.—

(1) IN GENERAL.—The table under section 133(a) of title 28, United States Code, is amended by striking the item relating to California and inserting the following:

"California:
Northern 14
Eastern 10
Central 27
Southern ..... 14.".

(2) EFFECTIVE DATE.—This subsection shall take effect on the later of—

(A) the date of enactment of this Act; or

(B) July 16, 2003.

SEC. 4. DISTRICT JUDGESHIP FOR THE DISTRICT OF IDAHO.

(a) ADDITIONAL PERMANENT DISTRICT JUDGESHIP.—The President shall appoint, by and with the advice and consent of the Senate, 1 additional district judge for the district of Idaho.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table under section 133(a) of title 28, United States Code, is amended by striking the item relating to Idaho and inserting the following:

"Idaho ..... 3.".

SEC. 5. TEMPORARY JUDGESHIP FOR THE NORTHERN DISTRICT OF IOWA.

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate, 1 additional judge for the northern district of Iowa.

(b) VACANCY NOT FILLED.—The first vacancy in the office of district judge in the northern district of Iowa occurring 10 years or more after the confirmation date of the judge named to fill the temporary district judgeship created by this subsection, shall not be filled.

SEC. 6. CONVERSION OF TEMPORARY JUDGESHIP TO PERMANENT JUDGESHIP FOR THE DISTRICT OF NEBRASKA.

(a) IN GENERAL.—The existing judgeship for the district of Nebraska 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 enactment of this Act, be authorized under section 133 of title 28, United States Code, and the incumbent in that office shall hold the office under section 133 of title 28, United States Code (as amended by this Act).

(b) TECHNICAL AND CONFORMING AMENDMENTS.—The table under section 133(a) of title 28, United States Code, is amended by striking the item relating to Nebraska and inserting the following:

"Nebraska ..... 4.".

SEC. 7. DISTRICT JUDGESHIPS FOR THE EASTERN DISTRICT OF NEW YORK.

(a) ADDITIONAL PERMANENT DISTRICT JUDGESHIPS.—The President shall appoint, by and with the advice and consent of the Senate, 2 additional district judges for the eastern district of New York.

(b) TECHNICAL AND CONFORMING AMENDMENT.—

(1) IN GENERAL.—The table under section 133(a) of title 28, United States Code, is amended

by striking the item relating to New York and inserting the following:

"New York:
Northern 5
Southern 28
Eastern 17
Western ..... 4.".

(2) EFFECTIVE DATE.—This subsection shall take effect on the later of—

(A) the date of enactment of this Act; or

(B) July 16, 2003.

SEC. 8. TEMPORARY JUDGESHIP FOR THE EASTERN DISTRICT OF NEW YORK.

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate 1 additional judge for the eastern district of New York.

(b) VACANCY NOT FILLED.—The first vacancy in the office of district judge in the eastern district of New York occurring 10 years or more after the confirmation date of the judge named to fill the temporary district judgeship created by this subsection, shall not be filled.

SEC. 9. DISTRICT JUDGESHIP FOR THE DISTRICT OF SOUTH CAROLINA.

(a) ADDITIONAL PERMANENT DISTRICT JUDGESHIP.—The President shall appoint, by and with the advice and consent of the Senate, 1 additional district judge for the district of South Carolina.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table under section 133(a) of title 28, United States Code, is amended by striking the item relating to South Carolina and inserting the following:

"South Carolina ..... 11.".

SEC. 10. DISTRICT JUDGESHIP FOR THE DISTRICT OF UTAH.

(a) ADDITIONAL PERMANENT DISTRICT JUDGESHIP FOR THE DISTRICT OF UTAH.—The President shall appoint, by and with the advice and consent of the Senate, 1 additional district judge for the district of Utah.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—The table under section 133(a) of title 28, United States Code, is amended by striking the item relating to Utah and inserting the following:

"Utah ..... 6.".

SEC. 11. BANKRUPTCY JUDGESHIPS.

(a) SHORT TITLE.—This section may be cited as the "Bankruptcy Judgeship Act of 2003".

(b) AUTHORIZATION FOR ADDITIONAL BANKRUPTCY JUDGESHIPS.—The following judgeship positions shall be filled in the manner prescribed in section 152(a)(1) of title 28, United States Code, for the appointment of bankruptcy judges provided for in section 152(a)(2) of such title:

(1) Two additional bankruptcy judgeships for the southern district of New York.

(2) Four additional bankruptcy judgeships for the district of Delaware.

(3) One additional bankruptcy judgeship for the district of New Jersey.

(4) One additional bankruptcy judgeship for the eastern district of Pennsylvania.

(5) Three additional bankruptcy judgeships for the district of Maryland.

(6) One additional bankruptcy judgeship for the eastern district of North Carolina.

(7) One additional bankruptcy judgeship for the district of South Carolina.

(8) One additional bankruptcy judgeship for the eastern district of Virginia.

(9) Two additional bankruptcy judgeships for the eastern district of Michigan.

(10) Two additional bankruptcy judgeships for the western district of Tennessee.

(11) One additional bankruptcy judgeship for the eastern and western districts of Arkansas.

(12) Two additional bankruptcy judgeships for the district of Nevada.

(13) One additional bankruptcy judgeship for the district of Utah.

(14) Two additional bankruptcy judgeships for the middle district of Florida.

(15) Two additional bankruptcy judgeships for the southern district of Florida.

(16) Two additional bankruptcy judgeships for the northern district of Georgia.

(17) One additional bankruptcy judgeship for the southern district of Georgia.

(c) TEMPORARY BANKRUPTCY JUDGESHIPS.—

(1) AUTHORIZATION FOR ADDITIONAL TEMPORARY BANKRUPTCY JUDGESHIPS.—The following judgeship positions shall be filled in the manner prescribed in section 152(a)(1) of title 28, United States Code, for the appointment of bankruptcy judges provided for in section 152(a)(2) of such title:

(A) One additional bankruptcy judgeship for the district of Puerto Rico.

(B) One additional bankruptcy judgeship for the northern district of New York.

(C) One additional bankruptcy judgeship for the middle district of Pennsylvania.

(D) One additional bankruptcy judgeship for the district of Maryland.

(E) One additional bankruptcy judgeship for the northern district of Mississippi.

(F) One additional bankruptcy judgeship for the southern district of Mississippi.

(G) One additional bankruptcy judgeship for the southern district of Georgia.

(2) VACANCIES.—

(A) IN GENERAL.—The first vacancy occurring in the office of bankruptcy judge in each of the judicial districts set forth in paragraph (1)—

(i) occurring 5 years or more after the appointment date of the bankruptcy judge appointed under paragraph (1) to such office; and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge;

shall not be filled.

(B) TERM EXPIRATION.—In the case of a vacancy resulting from the expiration of the term of a bankruptcy judge not described in subparagraph (A), that judge shall be eligible

for reappointment as a bankruptcy judge in that district.

(3) EXTENSION OF EXISTING TEMPORARY BANKRUPTCY JUDGESHIPS.—

(A) IN GENERAL.—The temporary bankruptcy judgeships authorized for the northern district of Alabama and the eastern district of Tennessee under paragraphs (1) and (9) of section 3(a) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) are extended until the first vacancy occurring in the office of a bankruptcy judge in the applicable district resulting from the death, retirement, resignation, or removal of a bankruptcy judge and occurring 5 years or more after the date of enactment of this Act.

(B) APPLICABILITY OF OTHER PROVISIONS.—All other provisions of section 3 of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) remain applicable to the temporary bankruptcy judgeships referred to in this subsection.

(d) TRANSFER OF BANKRUPTCY JUDGESHIP SHARED BY THE MIDDLE DISTRICT OF GEORGIA AND THE SOUTHERN DISTRICT OF GEORGIA.—The bankruptcy

judgeship presently shared by the southern district of Georgia and the middle district of Georgia shall be converted to a bankruptcy judgeship for the middle district of Georgia.

(e) CONVERSION OF EXISTING TEMPORARY BANKRUPTCY JUDGESHIPS.—

(1) DISTRICT OF DELAWARE.—The temporary bankruptcy judgeship authorized for the district of Delaware pursuant to section 3 of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note), shall be converted to a permanent bankruptcy judgeship.

(2) DISTRICT OF PUERTO RICO.—The temporary bankruptcy judgeship authorized for the district of Puerto Rico pursuant to section 3 of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note), shall be converted to a permanent bankruptcy judgeship.

(f) TECHNICAL AMENDMENTS.—Section 152(a)(2) of title 28, United States Code, is amended—

(1) in the item relating to the eastern and western districts of Arkansas, by striking "3" and inserting "4";

(2) in the item relating to the district of Delaware, by striking "1" and inserting "6";

(3) in the item relating to the middle district of Florida, by striking "8" and inserting "10";

(4) in the item relating to the southern district of Florida, by striking "5" and inserting "7";

(5) in the item relating to the northern district of Georgia, by striking "8" and inserting "10";

(6) in the item relating to the middle district of Georgia, by striking "2" and inserting "3";

(7) in the item relating to the southern district of Georgia, by striking "2" and inserting "3";

(8) in the collective item relating to the middle and southern districts of Georgia, by striking "Middle and Southern . . . . . 1";

(9) in the item relating to the district of Maryland, by striking "4" and inserting "7";

(10) in the item relating to the eastern district of Michigan, by striking "4" and inserting "6";

(11) in the item relating to the district of Nevada, by striking "3" and inserting "5";

(12) in the item relating to the district of New Jersey, by striking "8" and inserting "9";

(13) in the item relating to the southern district of New York, by striking "9" and inserting "11";

(14) in the item relating to the eastern district of North Carolina, by striking "2" and inserting "3";

(15) in the item relating to the eastern district of Pennsylvania, by striking "5" and inserting "6";

(16) in the item relating to the district of Puerto Rico, by striking "2 and inserting "3";

(17) in the item relating to the district of South Carolina, by striking "2" and inserting "3";

(18) in the item relating to the western district of Tennessee, by striking "4" and inserting "6";

(19) in the item relating to the district of Utah, by striking "3" and inserting "4"; and

(20) in the item relating to the eastern district of Virginia, by striking "5" and inserting "6".

Passed the Senate May 22, 2003.

Attest: EMILY J. REYNOLDS,

Secretary.

Chairman SENSENBRENNER. The chair recognizes the gentleman from Texas, Mr. Smith, to explain the bill.

Mr. SMITH. Thank you, Mr. Chairman. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SMITH. Mr. Chairman, the U.S. Judicial Conference biennially reviews the needs of the judiciary to determine if any of our Federal courts require additional judges. It completed its last review in March 2003 and submitted a list of judgeship recommendations to the House and Senate Committees on the Judiciary. The Conference set a benchmark caseload standard for considering requests at 430 weighted cases per judgeship for district courts. This 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.

Based on these criteria, the Senate passed S. 878 on May 22nd, 2003. The bill as referred to our Committee creates 12 permanent district judgeships and two temporary district judgeships. S. 878 also converts two temporary judgeships to permanent status.

Mr. Chairman, S. 878 represents a good start, but I will shortly offer an amendment to provide more content. I urge Members to support the amendment and the underlying bill, and I yield back the balance of my time.

Chairman SENSENBRENNER. Does the gentleman from California, Mr. Berman, wish to give a Democratic opening statement? If so, he is recognized for 5 minutes.

Mr. BERMAN. I thank the Chairman. I'm trying to get the state of play here, and while I get the state of the play, I think perhaps I shouldn't venture an opinion on a play that I don't yet understand, so I will pass up my right to make an opening statement.

Chairman SENSENBRENNER. Without objection, all Members may insert opening statements in the record at this point. Are there amendments? And the chair recognizes himself for purposes of offering an amendment. The clerk will report the amendment.

The CLERK. Amendment to S. 878 offered by Mr. Sensenbrenner. At the end of the bill add the following: Section 12, Additional Circuit Judges. (a) Permanent——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read and the chair recognizes himself for 5 minutes.

[The amendment follows:]

AMENDMENT TO S. 878

OFFERED BY MR. SENSENBRENNER

At the end of the bill, add the following:

SEC. 12. 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 striking the item relating to the first circuit and inserting the following:

"First ..... 7";

(2) by striking the item relating to the second circuit and inserting the following:

"Second ..... 15";

(3) by striking the item relating to the sixth circuit and inserting the following:

"Sixth ..... 17";

and

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

"Ninth ..... 33".

Chairman SENSENBRENNER. I am offering this amendment to meet the needs of the appellate courts in addition to the trial courts. This amendment will add a total of 11 new circuit judgeships to S. 878, and those judgeships will benefit the operations of the First, Second, Sixth and Ninth Circuit Courts of Appeal. This is the full complement of circuit judgeship recommendations proffered by the Judicial Conference. All of the judgeships more than comply with the minimum threshold standards developed by the Conference in its 2003 recommendations to Congress. By that standard, these circuit judgeships address the circuit courts that have the greatest need.

The amendment represents a good complement to the amendment that will be offered by the gentleman from Texas, Mr. Smith. I urge the adoption of the amendment and the underlying bill and yield back the balance of my time.

The question is on agreeing to the amendment offered by the chair. Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it and the amendment is agreed to.

Are there further amendments? The gentleman from Texas, Mr. Smith.

Mr. SMITH. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to S. 878 offered by Mr. Smith of Texas. Strike Sections 1 through 11 and insert the following: Section 1. New District Judgeships. The President shall——

Mr. SMITH. Mr. Chairman, I ask unanimous consent that the amendment be considered as read.

Chairman SENSENBRENNER. Without objection, the amendment is considered as read. The gentleman from Texas is recognized for 5 minutes.

[The amendment follows:]

AMENDMENT TO S. 878

OFFERED BY MR. SMITH OF TEXAS

Strike sections 1 through 11 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) One additional district judge for the northern district of Alabama.

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

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

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

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

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

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

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

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

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

(11) One additional district judge for the district of Nebraska.

(12) Two additional district judges for the district of New Mexico.

(13) Three additional district judges for the eastern district of New York.

(14) One additional district judge for the district of South Carolina.

(15) Two additional district judges for the eastern district of Virginia.

(16) One additional district judge for the district of Utah.

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 in-

cumbents 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) One additional district judge for the northern district of California.

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

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

(4) One additional district judge for the middle district of Florida.

(5) One additional district judge for the northern district of Illinois.

(6) One additional district judge for the northern district of Indiana.

(7) One additional district judge for the southern district of Indiana.

(8) One additional district judge for the northern district of Iowa.

(9) One additional district judge for the district of New Mexico.

(10) One additional district judge for the eastern district of New York.

(11) One additional district judge for the western district of New York.

(b) VACANCIES NOT FILLED.—(1) The first two vacancies in the office of district judge in the central district of California, occurring ten 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 three vacancies in the office of district judge in the southern district of California, occurring ten years or more after judges are first confirmed to fill all three 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 ten 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.

In order that the table contained in section 133(a) of title 28, United States Code, reflect the permanent judgeships created by sections 1 and 2 of this Act, such table 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 South Carolina to read as follows:

"South Carolina ..... 11";

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

"Utah ..... 6"; and

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

"Virginia:
Eastern 13
Western ..... 4".

Redesignate remaining sections accordingly.

7

Amend the title so as to read: "A bill to create additional Federal court judgeships.".

Mr. SMITH. Thank you, Mr. Chairman. My amendment incorporates the base text of S. 878 with two major revisions. First it adds 16 permanent and 12 temporary judgeships to the bill. It also converts two temporary judgeships to permanent seats.

The Judicial Conference has highly recommended that all of these judgeships be accepted. The vast majority of these seats will be located, it happens, in States associated with Members of our Committee, including Alabama, Arizona, California, Florida, Illinois, Indiana, Iowa, New York, Utah and Virginia.

Again, the extra judgeships included in this substitute more than satisfy the threshold requirements developed by the Judicial Conference; and second, all of the bankruptcy judges set forth on pages 7 through 14 of the bill are stricken. This will be dealt with in the context of the bankruptcy reform legislation pending before the Senate, which includes all these judgeships.

Mr. Chairman, it's unusual when the other body moves first on issues that fall within our Committee's jurisdiction. This is one of those rare occasions. This amendment incorporates the great majority of the bill as developed by the other body, so its adoption today augers well for further bicameral action.

I urge Members to support this amendment and S. 878 on final passage, and I yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman from California, Mr. Berman.

Mr. BERMAN. Thank you, Mr. Chairman. I want to thank Chairman Smith for offering this amendment, including a number of the judgeships recommended by the administrative office of the district judgeships. I note that the amendment leaves out 4 of the 46 district court judgeships, and I will offer a perfecting amendment, which I hope the Chairman of the Committee and the Chairman of the Subcommittee would feel comfortable supporting that would include those 4 of the 46 district judgeships.

Chairman SENSENBRENNER. Does the gentleman from California have an amendment?

Mr. BERMAN. I do.

Chairman SENSENBRENNER. The clerk will report the perfecting amendment.

Mr. BERMAN. Amendment 6.

The CLERK. Perfecting amendment to the Sensenbrenner amendment to S. 878, or the Smith amendment to S. 878. At the end insert the following——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read. The gentleman from California will be recognized for 5 minutes.

[The amendment follows:]

AMENDMENT TO THE AMENDMENT TO S. 878
OFFERED BY Mr. Berman

At the end insert the following:

SEC. ___ADDITIONAL DISTRICT JUDGESHIPS.

(a) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate—

(1) 1 additional district judge for the western district of Missouri;

(2) 1 additional district judge for the district of Oregon; and

(3) 1 additional district judge for the western district of Washington.

(b) TEMPORARY JUDGESHIP.—The President shall appoint, by and with the advice and consent of the Senate, 1 additional district judge for the district of Colorado. The first vacancy in the office of district judge in the district of Colorado, occurring 10 years or more after a judge is first confirmed to fill the temporary district judgeship created in that district by this subsection, shall not be filled.

Amend the table in section 133(a) of title 28, United States Code, to reflect the permanent judgeships created by this section.

Mr. BERMAN. Mr. Chairman, I would support—urge the Committee to support this amendment. I don't know of their rationale for leaving out these 4 judgeships, none of which are from California, but without understanding the logic of leaving them out, I think we should just be consistent and adopt all of the district court judgeships recommended by the AO and urge its adoption.

Chairman SENSENBRENNER. The question is agreeing to the perfecting amendment offered by the gentleman from California, Mr. Berman, to the amendment offered by the gentleman from Texas, Mr. Smith. Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the amendment is agreed to.

The question now is on the adoption of the Smith amendment as amended. Those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the amendment is agreed to.

Are there further amendments?

[No response.]

Chairman SENSENBRENNER. If there are no further amendments, a reporting quorum is present. The question occurs on the motion to report the bill, S. 878 favorably as amended. All those in favor will say aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the amendment, or the bill is reported favorably as amended.

Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute, incorporating the amendments adopted here today.

Without objection, the Chairman is authorized to move to go to conference pursuant to House rules.

Without objection, the staff is directed to make any technical and conforming changes, and all Members will be given 2 days, as provided by the House rules, in which to submit additional dissenting supplemental of minority views.

The business before the Committee having been completed, the chair thanks the Members for their attendance, prompt attendance today and their cooperation. And the Committee stands adjourned.

[Whereupon, at 10:18 a.m., the Committee was adjourned.]

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