

PROVIDING FOR CONSIDERATION OF S. 878, A BILL TO  
CREATE ADDITIONAL FEDERAL COURT JUDGESHIPS

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OCTOBER 4, 2004.—Referred to the House Calendar and ordered to be printed

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Mr. SESSIONS, from the Committee on Rules,  
submitted the following

R E P O R T

[To accompany H. Res. 814]

The Committee on Rules, having had under consideration House Resolution 814, by a non record vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of S. 878, A bill to create additional Federal court judgeships, under a structured rule. The rule provides one hour of general debate equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. The rule waives all points of order against consideration of the bill.

The rule provides that the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill shall be considered as an original bill for the purpose of amendment and shall be considered as read. The rule waives all points of order against the committee amendment in the nature of a substitute.

The rule makes in order only those amendments printed in this report. The rule provides that the amendments printed in this report may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for a division of the question in the House or in the Committee of the Whole. The rule waives all points of order against the amendments printed in this report.

Finally, the rule provides one motion to recommit with or without instructions.

#### COMMITTEE VOTES

Pursuant to clause 3(b) of House rule XIII the results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

#### *Rules Committee Record Vote No. 319*

Date: October 4, 2004.

Measure: S. 878—A bill to create additional Federal court judgeships.

Motion by: Mrs. Slaughter.

Summary of motion: To make in order en bloc and grant the appropriate waivers for the amendments offered by Representatives Kingston, Berman, Conyers, and Hyde/Conyers.

Results: Defeated 1 to 6.

Vote by Members: Linder—Nay; Hastings (WA)—Nay; Sessions—Nay; Reynolds—Nay; Putnam—Nay; Slaughter—Yea; Dreier—Nay.

#### SUMMARY OF AMENDMENTS MADE IN ORDER

(Summaries derived from information provided by the amendment sponsor.)

1. Sensenbrenner: Manager's Amendment. "Staggers" implementation of the 58 new Federal circuit and district court judgeships created by S. 878 over seven fiscal years (i.e. through FY2011). This would permit the bill to comport with the five-year budget authority allocation for direct spending. (10 minutes)

2. Simpson: Splits the current 9th Circuit Court of Appeals. Creates a new 9th Circuit featuring California, Guam, Hawaii, and the Northern Mariana Islands; a new 12th Circuit featuring Arizona, Nevada, Idaho, and Montana; and a new 13th Circuit featuring Alaska, Oregon, and Washington. (40 minutes)

#### TEXT OF AMENDMENTS MADE IN ORDER

#### 1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SENSENBRENNER OF WISCONSIN, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Strike sections 1 through 4 and insert the following:

#### **SECTION 1. NEW DISTRICT JUDGESHIPS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **SEC. 2. CONVERSION OF TEMPORARY TO PERMANENT JUDGESHIPS.**

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

## **SEC. 3. TEMPORARY JUDGESHIPS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### SEC. 4. CONFORMING AMENDMENTS.

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

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

“Alabama:	
Northern .....	8
Middle .....	4
Southern .....	3”;

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

“Arizona	15”;
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(3) by amending the item relating to California to read as follows:

“California:

Northern .....	15
Eastern .....	10
Central .....	28
Southern .....	15”;
(4) by amending the item relating to Florida to read as follows:	
“Florida:	
Northern .....	4
Middle .....	17
Southern .....	21”;
(5) by amending the item relating to Hawaii to read as follows:	
“Hawaii	4”;
(6) by amending the item relating to Idaho to read as follows:	
“Idaho	3”;
(7) by amending the item relating to Kansas to read as follows:	
“Kansas	6”;
(8) by amending the item relating to Missouri to read as follows:	
“Missouri:	
Eastern .....	7
Western .....	6
Eastern and Western .....	2”;
(9) by amending the item relating to Nebraska to read as follows:	
“Nebraska	4”;
(10) by amending the item relating to New Mexico to read as follows:	
“New Mexico	8”;
(11) by amending the item relating to New York to read as follows:	
“New York:	
Northern .....	5
Southern .....	28
Eastern .....	18
Western .....	4”;
(12) by amending the item relating to Oregon to read as follows:	
“Oregon	7”;

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

“South Carolina 11”;

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

“Utah 6”;

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

“Virginia:

Eastern ..... 13

Western ..... 4”; and

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

“Washington:

Eastern ..... 4

Western ..... 8”.

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

## 2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SIMPSON OF IDAHO, OR HIS DESIGNEE, DEBATABLE FOR 40 MINUTES

Insert after section 5 the following new section:

### SEC. 6. NINTH CIRCUIT REORGANIZATION.

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

(b) DEFINITIONS.—In this section:

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

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

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

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

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

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

(2) in the table—

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

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

and

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

“Twelfth .....	Arizona, Nevada, Idaho, Montana.
“Thirteenth .....	Alaska, Oregon, Washington.”.

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

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

“Ninth .....	San Francisco, Los Angeles.”;
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and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“(1) upon request by the chief judge of the Ninth Circuit or Twelfth Circuit, designate and assign 1 or more district judges within the Thirteenth Circuit to sit upon the Court of Appeals



of the Ninth Circuit or Twelfth Circuit, or a division thereof whenever the business of that court so requires; and

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

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

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

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

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

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

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

Strike subsection (c) of section 3.

Insert after section 6 the following:

#### **SEC. 7. NUMBER OF CIRCUIT JUDGES**

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

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

“First ..... 7”;

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

“Second ..... 15”;

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

“Sixth ..... 17”;

and

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

“Ninth ..... 19”.

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

“Twelfth ..... 8

“Thirteenth ..... 6”.

#### **SEC. 8. EFFECTIVE DATE.**

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

(b) SECTION 6.—Section 6 and the amendments made by section 6 shall take effect on the first October 1 that occurs on or after 9

months after the date on which all 5 judges authorized to be appointed to the ninth circuit court of appeals under section 5(a), and both judges authorized to be appointed under section 5(b), have been appointed, by and with the advice and consent of the Senate.

