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SUMMARY

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Legislative Proposals to Change the Geographic Boundaries of the U.S. Court of Appeals for the Ninth Circuit: Historical Overview and Analysis

This report provides a historical overview and analysis of legislative proposals and other congressional actions related to geographically dividing the U.S. Court of Appeals for the Ninth Circuit into two or more regional circuits. The Ninth Circuit is comprised of nine states in the western United States (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington) and two territories (Guam and the Northern Mariana Islands). The circuit has a current population of 67.1 million, making it the most populous of the 12 regional appellate circuits that provide geographic and administrative structure for the federal court system. The Ninth Circuit is also among the busiest of circuits based on various caseload statistics. At present, there are 29 authorized judgeships for the circuit—which is the most judgeships authorized for a circuit court (the Fifth Circuit has 17 judgeships, which is the second-greatest number of judgeships authorized for a circuit). In 2023, the Judicial Conference of the United States, which is the policymaking body for the federal courts, recommended that Congress authorize two additional permanent judgeships for the Ninth Circuit.

Given the Ninth Circuit's large population, its expansive geographic size, its heavy workload, and various other factors, there has been ongoing interest by some Members of Congress in reorganizing the circuit into two or more new regional circuits. CRS identified 59 legislative proposals introduced between 1963 and September 30, 2024, to reorganize the Ninth Circuit into two or more smaller circuits. At least one bill to divide the Ninth Circuit has been introduced during each Congress from the 101st (1989-1990) to the 118th (2023-2024), with the greatest number of bills introduced during the 109th Congress (2005-2006). Most recently, during the 118th Congress, four legislative proposals have been introduced to reorganize the circuit. Other congressional actions related to dividing the Ninth Circuit have included hearings to discuss the issue, floor statements given by those who support or oppose reorganizing the circuit, and the creation of two commissions to study whether the circuit should be divided.

Following the current Ninth Circuit's creation in 1866, its geographic boundaries have changed solely as a result of Congress adding states or territories to the circuit (i.e., its boundaries have only expanded). In contrast, there have been two instances since 1866 when Congress changed the geographic boundaries of other regional circuits by removing several states from those circuits in order to create new regional circuits (i.e., the original circuit was divided into two separate geographic circuits). In both cases, a single circuit was divided to create no more than two new circuits. In 1929, Congress created a Tenth Circuit by transferring Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming from the Eighth Circuit to a new Tenth Circuit. In 1980, Congress established the Eleventh Circuit (effective October 1, 1981) by transferring Alabama, Florida, and Georgia from the Fifth Circuit to a new Eleventh Circuit.

Several issues that might be useful to consider in determining whether to reorganize the Ninth Circuit, or any other circuit, include the relevance of geographic size versus population size given technological changes over the past several decades, determining which caseload statistics are the most relevant in deciding whether to divide a circuit (and the time frame for examining the statistics), the viewpoints of various judicial stakeholders (e.g., judges serving in the affected circuit), and the potential financial cost of dividing a circuit. Other issues might include whether "adjudicative divisions" might be a solution to address some of the concerns with the size of the Ninth Circuit and whether combining a reorganization of the Ninth Circuit with an increase, more broadly, in the number of circuit court judgeships might provide a policy solution that appeals to Congress.

Contents

Figures

Tables

Contacts

Introduction

The issue of whether to geographically divide (i.e., reorganize) the U.S. Court of Appeals for the Ninth Circuit has been the subject of congressional interest for at least 60 years. Factors often cited as problematic by proponents of dividing the circuit include its large population size, its expansive geographic area, its heavy caseload, and the circuit's use of a limited en banc procedure.[1] Those opposed to dividing the Ninth Circuit often argue that the administrative disruption and financial costs of reorganizing the circuit outweigh any potential benefits.

This report provides a historical overview and analysis of legislative proposals and other congressional actions related to the issue of geographically dividing the Ninth Circuit. Other congressional actions discussed in the report include committee hearings held on legislative proposals to reorganize the circuit, floor statements made by Members in support of or in opposition to dividing the circuit, and Congress's creation of commissions to study whether the Ninth Circuit should be reorganized.

To provide institutional and historical context on the topic of reorganizing the Ninth Circuit, this report also provides an overview of the existing 12 regional U.S. courts of appeals, information about past changes to the geographic boundaries of the Ninth Circuit, and information about two past instances when Congress geographically divided regional circuit courts. The report concludes with a discussion of issues that might be relevant considerations in determining whether to reorganize the Ninth Circuit (or any other regional circuit court).

U.S. Courts of Appeals

The U.S. courts of appeals, or circuit courts, take appeals from federal district court decisions and are also empowered to review the decisions of many administrative agencies. Circuit courts do not retry cases, consider new evidence, or hear witness testimony—instead, circuit courts "review the procedures and the decisions in the trial court to make sure that the proceedings were fair and that the proper law was applied correctly."[2] Cases presented to the circuit courts are generally considered by judges sitting in three-member panels. Given that the U.S. Supreme Court typically hears about 100 to 150 of the more than 7,000 cases it is asked to review each year, decisions by the circuit courts are usually the final word in most cases.[3]

Altogether, there are 13 circuit courts—12 of which are organized into distinct geographic circuits or regions, with each state assigned to one of 11 circuits and the District of Columbia organized as its own circuit. One is a nationwide circuit—the U.S. Court of Appeals for the Federal Circuit—that takes cases from across the nation because it has specialized subject matter jurisdiction.[4]

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[1] Beyond the scope of this particular report are arguments related to the ideological or partisan disposition of judges appointed to the Ninth Circuit, whether the jurisprudence of the circuit is influenced by such appointments, and, if so, whether the circuit should be divided because of it. Legislative proposals to divide the circuit have been introduced by Members from both major political parties since at least the 1960s, with Members typically relying on arguments unrelated to the circuit's actual or perceived ideological or partisan orientation.

[2] "About the U.S. Courts of Appeals," Administrative Office of U.S. Courts, https://www.uscourts.gov/about-federal-courts/court-role-and-structure/about-us-courts-appeals.

[3] Ibid.

[4] The Federal Circuit exercises nationwide jurisdiction and hears certain specialized legal claims related to international trade, government contracts, patents, trademarks, certain money claims against the U.S. government, federal personnel, (continued...)

A total of 179 judgeships are currently authorized by law for the 13 circuit courts (167 for the 12 regional circuit courts and 12 for the Federal Circuit).[5]

Figure 1 provides, for the 12 regional circuit courts, (1) each circuit's population, (2) the percentage of the national population represented by each circuit's population, (3) the number of judgeships currently authorized for each circuit, and (4) the percentage of the 167 regional circuit court judgeships authorized by Congress for each circuit.[6] So, for example, the Seventh Circuit (comprised of Illinois, Indiana, and Wisconsin) has a population of 25,322,843, which represents 7.5% of the U.S. population. At present, there are 11 judgeships authorized for the Seventh Circuit, representing 6.6% of the 167 judgeships authorized by Congress for all 12 regional circuit courts.

The greatest difference between the percentage of the U.S. population represented by a circuit and the percentage of judgeships authorized for that circuit is for the D.C. Circuit, with 0.2% of the U.S. population and 6.6% of the nation's circuit court judgeships. This difference likely reflects, in part, the unique nature of the court's jurisdiction and the number of judges needed to handle the types of cases which fall within that jurisdiction.[7]

veterans' benefits, and public safety officers' benefits claims. The court was created in its modern form by the Federal Courts Improvement Act, 96 Stat. 25 (April 2, 1982).

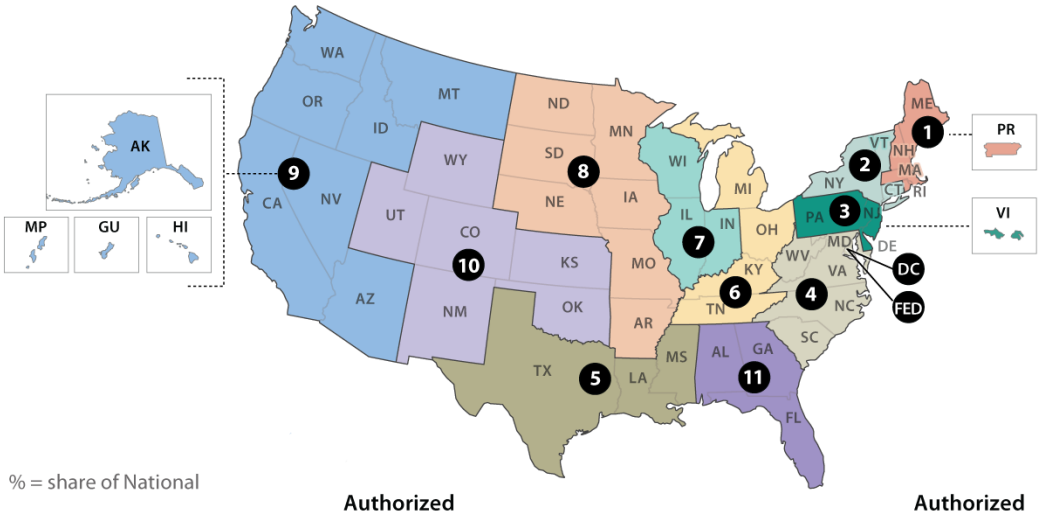
[5] Congress last authorized circuit court judgeships in 1990, increasing the number for the regional circuit courts from 156 to 167 (P.L. 101-650, December 1, 1990).

[6] The circuit population totals reported in **Figure 1** were calculated using population estimates provided by the U.S. Census Bureau for each state, the District of Columbia, and Puerto Rico for July 1, 2023. The population estimates for Guam, the Northern Mariana Islands, and the U.S. Virgin Islands were taken from other publicly available sources.

[7] For example, some scholars have noted that the "decisions by the Congress to carve out certain areas of federal law as the special preserve of the D.C. Circuit and the infrequency with which the Supreme Court considers, let alone reverses, the Circuit's decisions combine to give the court the final say—and the only appellate say—over numerous laws and rules affecting the entire nation." Eric M. Fraser et al., "The Jurisdiction of the D.C. Circuit," *Cornell Journal of Law and Public Policy*, vol. 23, no. 1, https://scholarship.law.cornell.edu/cjlpp/vol23/iss1/4.

Figure 1. Population Figures and Authorized Judgeships for the Twelve Regional U.S. Courts of Appeals

(October 2024)



% = share of National

Circuit	Population		Authorized Judgeships	
DC	678,972	0.2%	11	6.6%
1	14,100,828	4.2%	6	3.6%
2	23,835,856	7.0%	13	7.8%
3	23,383,164	6.9%	14	8.4%
4	32,875,068	9.7%	15	9.0%
5	38,016,740	11.2%	17	10.2%
6	33,475,839	9.9%	16	9.6%
7	25,322,843	7.5%	11	6.6%
8	21,890,430	6.5%	11	6.6%
9	67,125,781	19.8%	29	17.4%
10	18,988,142	5.6%	12	7.2%
11	38,748,421	11.4%	12	7.2%

Source: Congressional Research Service compilation of data provided by the U.S. Census Bureau, World Bank, and the Administrative Office of U.S. Courts.

Notes: In calculating the percentage of authorized judgeships assigned to a circuit, only the 167 regional circuit court judgeships authorized by Congress are considered (e.g., the 12 judgeships authorized for the Federal Circuit are not included in the calculation). Percentages may not add to 100 due to rounding.

The second-greatest difference is for Eleventh Circuit (comprised of Alabama, Florida, and Georgia), representing 11.4% of the U.S. population while having 7.2% of authorized judgeships. This difference likely reflects, in part, population growth within the Eleventh Circuit since 1980, when the circuit was created. The number of judgeships first authorized for the circuit in 1980—12—is also the same number of judgeships currently authorized.[8] In 2023, the Eleventh Circuit's population was 38,748,421—an increase of 103% from the circuit's 1980 population of 19,103,317.[9]

The third-greatest difference is for the Ninth Circuit (comprised of California, eight other Western states, and two U.S. territories), representing 19.8% of the U.S. population while having 17.4% of authorized judgeships. As with the Eleventh Circuit, this difference likely reflects the relatively large population growth within the Ninth Circuit since judgeships were last authorized for the

[8] As discussed elsewhere in the report, the Fifth Circuit was reorganized into a new Fifth and Eleventh Circuit, and 12 judgeships were transferred from the old Fifth Circuit to the new Eleventh Circuit (P.L. 96-452, October 14, 1980).

[9] The Eleventh Circuit's 1980 population figure is based on state population totals provided by the U.S. Census Bureau, *1981 U.S. Census Report*, p. 9 (Table 8), https://www2.census.gov/prod2/statcomp/documents/1981-02.pdf.

circuit (which happened in 1984).[10] In 2023, the Ninth Circuit's population was 67,125,781—an increase of 66% from the circuit's 1984 population of 40,350,682.[11]

The difference between the percentage of the U.S. population represented by a circuit and the percentage of judgeships authorized for that circuit is less than 1% for six of the remaining nine circuits.[12]

Past Changes to the Geographic Boundaries of the Ninth Circuit

Historically, "judicial circuits have provided geographical and administrative structure for the federal court system."[13] During the first 70 years of the federal government, it was not uncommon for Congress to expand and reorganize the system of judicial circuits that was established by the Judiciary Act of 1789.[14] In 1866, Congress "reorganized the states into the nine circuits and established the geographical outline that has remained unchanged except for the inclusion of new states within existing circuits and the [geographic] division of two circuits."[15] The 1866 reorganization established the Ninth Circuit as a regional circuit initially comprised of three Western states (California, Nevada, and Oregon).[16]

Table 1 provides information about how the boundaries of the Ninth Circuit's two predecessor circuits, the California Circuit and the Tenth Circuit, changed prior to 1866, as well as how the boundaries of the Ninth Circuit itself changed after 1866. The table also identifies the years, beginning with 1929, in which Congress authorized new judgeships for the Ninth Circuit.

[10] P.L. 98-353, July 10, 1984. This excludes the single judgeship gained by the Ninth Circuit when an existing judgeship was transferred in 2009 from the U.S. Circuit Court of Appeals for the District of Columbia to the Ninth Circuit. P.L. 110-177, January 7, 2008.

[11] The Ninth Circuit's 1984 population figure is based on state population totals provided by the U.S. Census Bureau, "Intercensal Estimates of the Total Resident Population of States: 1980 to 1990," https://www2.census.gov/programs-surveys/popest/tables/1980-1990/state/asrh/st8090ts.txt. The 1984 population figures for Guam and the Northern Mariana Islands were obtained from the World Bank Group population indicators available at https://data.worldbank.org/indicator/SP.POP.TOTL.

[12] Specifically, the difference between the percentage of the national population residing within a circuit and the percentage of regional circuit court judgeships authorized for that circuit is less than 1% for the Eighth Circuit (0.1%), Sixth Circuit (0.3%), First Circuit (0.6%), Second Circuit (0.7%), Fourth Circuit (0.7%), and Seventh Circuit (0.9%).

[13] "Federal Judicial Circuits," Federal Judicial Center, https://www.fjc.gov/history/administration/federal-judicial-circuits.

[14] Ibid. According to another source, "Between 1789 and 1866, Congress realigned the circuits thirteen times, in each case to adjust the Supreme Court Justices' trial court assignments." *Report by the Commission on Structural Alternatives for the Federal Courts of Appeals*, December 18, 1998, p. 8, https://library.unt.edu/gpo/csafca/final/appstruc.pdf. During that period, Congress had "directed Supreme Court justices to travel around each circuit to convene circuit courts with the respective district judges. This approach saved the money a separate corps of judges would require, exposed the justices to the state laws and legal practices that affected the Supreme Court docket, and promoted familiarity with the government in the country's far reaches. The circuits, thus, were a means of allocating the trial work of Supreme Court justices." (p. 7).

[15] "Federal Judicial Circuits," Federal Judicial Center, https://www.fjc.gov/history/administration/federal-judicial-circuits.

[16] The Judicial Circuits Act of 1866 (ch. 210, 14 Stat. 209, July 23, 1866).

Table 1. Selected Geographic and Judgeship Changes to the U.S. Court of Appeals for the Ninth Circuit

Type of change: = Geographic boundaries = Number of judgeships authorized

Year	Change
1855	Congress established the California Circuit, which included only the State of California (10 Stat. 631, March 2, 1855)
1863	Congress abolished the California Circuit and moved California to the newly created Tenth Circuit, which also included Oregon (12 Stat. 794, March 3, 1863)
1865	Congress included Nevada in the Tenth Circuit, which also included California and Oregon (13 Stat. 440, February 27, 1865)
1866	Congress reorganized existing states into nine circuits, establishing the familiar geographic outline used today (but which also changed as new states were added to existing circuits and when two of the circuits were later divided by Congress) As part of the reorganization, Congress abolished the Tenth Circuit and transferred California, Nevada, and Oregon to the new Ninth Circuit (14 Stat. 209, July 23, 1866) **Note:** The Tenth Circuit was later reestablished in 1929 with the same boundaries as it has today (45 Stat. 1347, February 28, 1929)
1889	Congress included Montana and Washington in the Ninth Circuit (25 Stat. 676, February 22, 1889)
1890	Congress included Idaho in the Ninth Circuit (26 Stat. 217, July 3, 1890)
1911	Congress included the Territory of Hawaii in the Ninth Circuit (36 Stat. 1131, March 3, 1911)
1910	Congress included Arizona in the Ninth Circuit effective upon its admission as a state in 1912 (36 Stat. 576, June 20, 1910)
1929	Congress authorized a temporary judgeship for the Ninth Circuit, increasing the number of judgeships from 3 to 4 (70 Cong. Ch. 413, March 1, 1929)[a]
1933	Congress made permanent the temporary judgeship for the Ninth Circuit (73 Cong. Ch. 102, June 16, 1933)
1935	Congress authorized 1 additional judgeship for the Ninth Circuit, increasing the number of judgeships from 4 to 5 (74 Cong. Ch. 425, August 2, 1935)
1937	Congress authorized 2 additional judgeships for the Ninth Circuit, increasing the number of judgeships from 5 to 7 (75 Cong. Ch. 80, April 14, 1937)
1948	Congress included the Territory of Alaska in the Ninth Circuit (62 Stat. 870, June 25, 1948)
1951	Congress included the Territory of Guam in the Ninth Circuit (65 Stat. 723, October 31, 1951)
1954	Congress authorized 2 additional judgeships for the Ninth Circuit, increasing the number of judgeships from 7 to 9 (83 Cong. Ch. 6, February 10, 1954)
1958	Congress included Alaska in the Ninth Circuit effective upon its admission as a state (72 Stat. 349, July 7, 1958)
1959	Congress included Hawaii in the Ninth Circuit effective upon its admission as a state (73 Stat. 10, March 18, 1959)
1968	Congress authorized 4 additional judgeships for the Ninth Circuit, increasing the number of judgeships from 9 to 13 (P.L. 90-347, June 18, 1968)
1977	Congress included the Territory of the Northern Mariana Islands in the Ninth Circuit (91 Stat. 1265, November 8, 1977)
1978	Congress authorized 10 additional judgeships for the Ninth Circuit, increasing the number of judgeships from 13 to 23 (P.L. 95-486, October 20, 1978)
1984	Congress authorized 5 additional judgeships for the Ninth Circuit, increasing the number of judgeships from 23 to 28 (P.L. 98-353, July 10, 1984)
2009	Congress authorized the transfer of a judgeship from the D.C. Circuit to the Ninth Circuit, increasing the number of judgeships from 28 to 29 (P.L. 110-177, January 7, 2008)

Source: Congressional Research Service compilation of information based on publicly available sources.

a. While not reflected in **Table 1**, Congress previously created judgeships for the Ninth Circuit in 1869 (41 Cong. Ch. 22, April 10, 1869), in 1891 (51 Cong. Ch. 517, March 3, 1891), and in 1895 (53 Cong. Ch. 94, February 18, 1895).

As shown by **Table 1**, Congress altered the geographic boundaries of the Ninth Circuit on multiple occasions during the period from 1889 to 1977.[17] In 1889, Congress added Montana and Washington to the Ninth Circuit, effective upon their admission as states that same year.[18] Idaho was added to the Ninth Circuit in 1890, while Alaska and Hawaii were later included in 1958 and 1959, respectively.[19] Congress added the Territory of Guam to the Ninth Circuit in 1951 and the Territory of the Northern Mariana Islands in 1977.[20]

Table 1 also shows that, during the 80-year period from 1929 to 2009, Congress increased the number of judgeships authorized for the Ninth Circuit from 4 to 29. With the exception of the 1940s, Congress authorized at least one new judgeship for the Ninth Circuit during each decade from the 1920s to the 1980s—with 1984 being the most recent year when permanent judgeships were authorized for the circuit.[21]

The most recent increase in the number of judgeships for the Ninth Circuit, which occurred in 2009, was not the result of Congress authorizing a new judgeship for the circuit but instead reflected the transfer of one judgeship from the D.C. Circuit to the Ninth Circuit.[22]

Past Geographic Divisions of Other Judicial Circuits

Following the current Ninth Circuit's creation in 1866, its geographic boundaries have changed solely as a result of Congress adding states or territories to the circuit (i.e., its boundaries have only expanded).

There have been two instances since 1866 when Congress changed the geographic boundaries of other regional circuits by removing several states from those circuits in order to create new regional circuits (i.e., the original circuit was divided into two separate geographic circuits). In both cases, a single circuit was divided to create no more than one additional circuit.

[17] Not included in **Table 1** are instances when the Supreme Court, under the authority vested in it by Section 15 of the Evarts Act of 1891, assigned various territories to the Ninth Circuit (e.g., in 1891, the Supreme Court assigned the Territories of Alaska and Arizona to the Ninth Circuit). While assigning territories to the Ninth Circuit allowed the circuit court "to exercise jurisdiction over the territories, it did not formally change the composition of the Ninth Circuit." "Federal Judicial Circuits: Ninth Circuit," Federal Judicial Center, https://www.fjc.gov/history/administration/federal-judicial-circuits-ninth-circuit-0.

[18] "Federal Judicial Circuits: Ninth Circuit," Federal Judicial Center, https://www.fjc.gov/history/administration/federal-judicial-circuits-ninth-circuit-0.

[19] Ibid.

[20] Ibid.

[21] The Judicial Conference, in its most recent recommendation to Congress, requested that two new permanent judgeships be authorized for the Ninth Circuit. Administrative Office of U.S. Courts, *2023 Judicial Conference Judgeship Recommendations*, as approved by the Judicial Conference in March 2023, https://www.uscourts.gov/sites/default/files/2023_judicial_conference_judgeship_recommendations_0.pdf.

[22] P.L. 110-177, January 7, 2008.

Eighth Circuit

In 1929, Congress reestablished a Tenth Circuit by transferring Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming from the Eighth Circuit to a new Tenth Circuit.[23] The Tenth Circuit had originally been comprised of California, Oregon, and Nevada but was abolished in 1866 when the Ninth Circuit was created.

The House Judiciary Committee report accompanying the 1929 legislation stated that the "necessity for dividing this large circuit and relieving the litigants and judges of the strain and the great amount of travel now required to dispose of the court's business has long been apparent."[24] The report highlighted the Eighth Circuit's large population, noting that the "population of the circuit is over 18,000,000, which is about 5,000,000 more than the next largest circuit and many times larger than some of the other circuits."[25] It also noted the Eighth Circuit's high workload for the period from 1915 to 1928, stating that, "with the exception of the second circuit [New York, Connecticut, and Vermont] the eighth circuit disposes of more judicial business than any other circuit in the United States."[26] Additionally, according to the report, with "this division [of the Eighth Circuit] the so-called mining States have been grouped together [as the new Tenth Circuit] in order to bring about as far as possible uniformity of decision in this branch of law."[27]

The House report also emphasized that authorizing additional judgeships for the Eighth Circuit would not serve as a substitute for dividing the circuit. Given the circuit's geographic size, with judges sitting in different locations and on panels "constituted of different personnel, it is impossible to secure any sort of uniformity of [legal] decision in the circuit. Such a situation inevitably leads to dissatisfaction among the litigants and results in many appeals being taken to the Supreme Court...which otherwise would not be brought."[28]

Finally, the report discussed the support expressed by various judicial stakeholders for dividing the Eighth Circuit into two separate circuits, acknowledging endorsements of the legislation by all of the circuit judges serving in the Eighth Circuit, nearly all of the district judges in the circuit, the Attorney General, the American Bar Association, and nearly all of the state bar associations affected by the change.[29]

[23] 70 Cong. Ch. 363, February 28, 1929. At its peak geographic size, the Eight Circuit included 13 states: Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Utah, and Wyoming.

[24] H.Rept. 2464 (to accompany H.R. 16658), 70th Cong. (1928-1929), "Amend Judicial Code to Create an Additional Circuit," p. 1, February 11, 1929. See also S.Rept. 1843 (to accompany H.R. 16658), 70th Cong. (1928-1929), "Creation of New Judicial Circuit," February 21, 1929.

[25] H.Rept. 2464 (to accompany H.R. 16658), 70th Cong. (1928-1929), "Amend Judicial Code to Create an Additional Circuit," p. 1, February 11, 1929.

[26] Ibid.

[27] Ibid., p. 3.

[28] Whether this particular issue remains relevant because of technological or administrative changes since 1929 is beyond the scope of this report.

[29] H.Rept. 2464 (to accompany H.R. 16658), 70th Cong. (1928-1929), "Amend Judicial Code to Create an Additional Circuit," p. 3, February 11, 1929.

Fifth Circuit

In 1980, Congress established the Eleventh Circuit (effective October 1, 1981) by transferring Alabama, Florida, and Georgia from the Fifth Circuit to a new Eleventh Circuit.[30]

The House report accompanying the 1980 legislation stated that the "goal of the legislation is to meet societal change and growing caseloads in the six States presently comprising the Fifth Circuit."[31] According to the report, the division of the circuit "accomplishes this by providing the residents, attorneys and litigants who reside or litigate within those States with a new Federal judicial structure which is capable of meeting the clear mandates of our judicial system—the rendering of consistent, expeditious, fair and inexpensive justice."[32]

The report characterized the Fifth Circuit, which at the time had 26 active judges and 11 senior judges who were active in the work of the court, as "the largest appellate court in the history of the Republic."[33] Consequently, the "size of the Court itself now creates problems which make unduly burdensome, and, in the opinion of many of the witnesses [who testified about the legislation] seriously impair, the effective administration of justice within the Circuit."[34] The report also states that "geographically, the Fifth Circuit, composed of six states, is huge in size extending from El Paso, Texas, to Miami, Florida."[35]

The House report accompanying the 1980 legislation emphasized that the quality and uniformity of judicial decisions might be impacted by the Fifth Circuit's relatively large size and busy workload. Specifically, the report stated that the size of the circuit "has the possibility of diminishing the quality of justice" and, given the circuit's large number of opinions each year, "it becomes even more difficult to preserve uniformity in the law of the circuit."[36] Consequently, the "possibility of intracircuit conflicts is extremely great and occurs with regularity. The only sanction for such conflicts is to resort to en banc consideration."[37] The report argued that, given the large number of judges appointed to the circuit, en banc consideration "is a most cumbersome, time consuming and difficult means of resolving lawsuits."[38]

The 1980 House report also emphasized the various financial savings or benefits that would accrue to taxpayers and litigants by dividing the Fifth Circuit into two circuits. The report stated, for example,

> there are obvious savings of unnecessary expense that will come from smaller geographical areas, and shortened lines of communications and transportation. The federal treasury will be saved the expense of transporting judges and their staffs all over the Circuit from West Texas to South Florida. The cost of appeals to litigants now includes the time and expenses of their counsel traveling far distances for the purpose of presenting oral arguments.[39]

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[30] P.L. 96-452, October 14, 1980. At its peak geographic size, the Fifth Circuit included six states and an unorganized territory: Alabama, Florida, Georgia, Louisiana, Mississippi, Texas, and the Panama Canal Zone.

[31] H.Rept. 96-1390 (to accompany H.R. 7665), 96th Cong. (1979-1980), "Fifth Circuit Court of Appeals Reorganization Act of 1980," p. 1, September 25, 1980.

[32] Ibid.

[33] Ibid., p. 2.

[34] Ibid.

[35] Ibid.

[36] Ibid., p. 3.

[37] Ibid.

[38] Ibid.

[39] Ibid., p. 4.

Other savings highlighted by the report include those achieved from "eliminating the number of copies of everything that is done" and "eliminating duplication on the en banc function."[40]

The report also stated that "it is the view of the committee that as now constituted the Court can be divided into two three-State circuits without any significant philosophical consequences within either of the proposed circuits."[41] The term "philosophical consequences" is not defined or discussed further in the report but may refer to the partisan or ideological balance among judges for each circuit. It may also refer to a balance among judicial philosophies (i.e., the different ways in which judges understand and interpret the law).

Finally, the report notes support for the legislation by various judicial stakeholders. According to the 1980 report, such support was expressed by the U.S. Department of Justice, the American Bar Association, the Judicial Council of the Fifth Circuit, the Federal Bar Association, the National Association of Attorneys General, the Attorneys General of the six states within the Fifth Circuit, a majority of judges serving in the Fifth Circuit (including district court judges, magistrate judges, and bankruptcy judges), and the state bar associations for Alabama, Florida, Georgia, Mississippi, and Texas.[42] Additionally, other organizations withdrew previous opposition to dividing the circuit, including the American Civil Liberties Union, Lawyers Committee for Civil Rights Under Law, Alabama Black Lawyers Association, and NAACP Legal Defense Fund.[43]

Congressional Interest in Changing the Geographic Boundaries of the Ninth Circuit

Over the years, some Members have introduced various legislative proposals in the Senate and House to divide the Ninth Circuit into two or more regional circuits. Congressional committees have also held a number of hearings on the issue. Additionally, some Members have given floor speeches to express their support for or opposition to some of these proposals. Congress has also created two commissions to study whether the regional circuits, particularly the Ninth Circuit, need to be reorganized.

Legislative Proposals

The first legislative proposal identified by CRS that sought to reorganize the Ninth Circuit's geographic boundaries was introduced in 1963 by Senator J. Bennett Johnston of Louisiana (the legislation was also introduced on behalf of Senator Warren Magnuson of Washington State). The proposal retained Arizona, California, Nevada, Guam, and Hawaii in the Ninth Circuit and

[40] Ibid.

[41] Ibid.

[42] Ibid., pp. 4-5.

[43] Ibid., p. 5. On this particular issue, the report states that "One of the principal bases of opposition to division of the circuit when it was first proposed was fear on the part of civil rights supporters that it would perpetuate the judiciary in the South as an all-white institution. Given the historical and political context in which the proposal arose, the committee cannot say that this fear was groundless. However, the affirmative action guidelines for judicial selections issued pursuant to Congressional directive and appointments made in the Fifth Circuit, both on the appellate and district court levels, indicate that any problem of this nature that may have existed is rapidly disappearing.... It is the view of the committee that continued adherence to the affirmative action guidelines by the President, whoever he may be, in appointing, and the Senate, in confirming judicial nominations, will completely eliminate this matter from future consideration."

created a new Eleventh Circuit comprised of Alaska, Idaho, Montana, Oregon, and Washington.[44] The legislation was referred to the Senate Judiciary Committee, but no hearings were held on the proposal.[45]

Overall, from 1963 (88th Congress) through September 30, 2024 (118th Congress), CRS identified 59 bills that were introduced to change the geographic boundaries of the Ninth Circuit by dividing it into two or more circuits.[46] Of the 59 measures, 30 were introduced in the Senate and 29 in the House (many, but not all, were companion measures).

At least one bill to divide the Ninth Circuit has been introduced during each Congress from the 101st (1989-1990) to the 118th (2023-2024), with the greatest number of bills introduced during the 109th Congress (2005-2006).[47] During that particular Congress, eight measures were introduced to change the Ninth Circuit's geographic boundaries.

The second-greatest number of legislative proposals introduced to divide the circuit was during the 108th Congress (seven bills during the 2003-2004 period), while the third-greatest number was introduced during the 115th Congress (six bills during the 2017-2018 period). Most recently, during the 118th Congress, four bills have been introduced to divide the Ninth Circuit.[48]

Figure 2 identifies the five most common geographic divisions of the Ninth Circuit proposed by legislation introduced from 1963 to 2024. The most common proposal, introduced a total of 24 times and identified in the figure as "Proposal A," would retain California, Hawaii, Guam, and the Northern Mariana Islands in the Ninth Circuit and transfer the remaining states (Alaska, Arizona, Idaho, Montana, Nevada, Oregon, and Washington) to a new Twelfth Circuit.[49] Under these proposed lines, the Ninth Circuit would have a current population of 40.6 million (ranking 1st in population among the 13 regional circuits) and the Twelfth Circuit a population of 26.5 million (ranking 6th).

The four other proposals included in **Figure 2** have each been introduced six times. The proposals are presented in alphabetical order based on when each was last introduced (e.g., Proposal B was introduced more recently than Proposal C).

Under Proposal B, the Ninth Circuit would be comprised of California, Hawaii, Oregon, Washington, Guam, and the Northern Mariana Islands, while a new Twelfth Circuit would be

[44] S. 1876, 88th Cong., 1st sess., July 16, 1963. At the time the legislation was introduced, Congress had not yet added the Northern Mariana Islands to the Ninth Circuit. The territory was added in 1977 (see 1977 91 Stat. 1265, November 8, 1977).

[45] In response to the legislation, the Judicial Conference's Committee on the Geographic Organization of the Courts reported in 1964 that the committee "submitted a comprehensive analysis of the judicial business in the circuit and concluded that there is no need at the present time for a division of the Ninth Circuit." Senate Judiciary Committee, Subcommittee on Improvements in Judicial Machinery, *1967 Omnibus Judgeship Bill*, hearing on S. 2349, 90th Cong., September 8, 1967, p. 53.

[46] This total does not include legislative proposals introduced to establish commissions to study the regional structure of the federal courts and/or recommend changes to the structure. Also not included in this total are any legislative proposals introduced to change the internal administrative divisions within the Ninth Circuit.

[47] During the 118th Congress, four legislative proposals have been introduced to change the geographic boundaries of the Ninth Circuit. These proposals are S. 5229 (September 25, 2024), S. 1878 (June 8, 2023), H.R. 270 (January 10, 2023), and H.R. 88 (January 9, 2023).

[48] See S. 5229 (September 25, 2024), S. 1878 (June 8, 2023), H.R. 270 (January 10, 2023), and H.R. 88 (January 9, 2023).

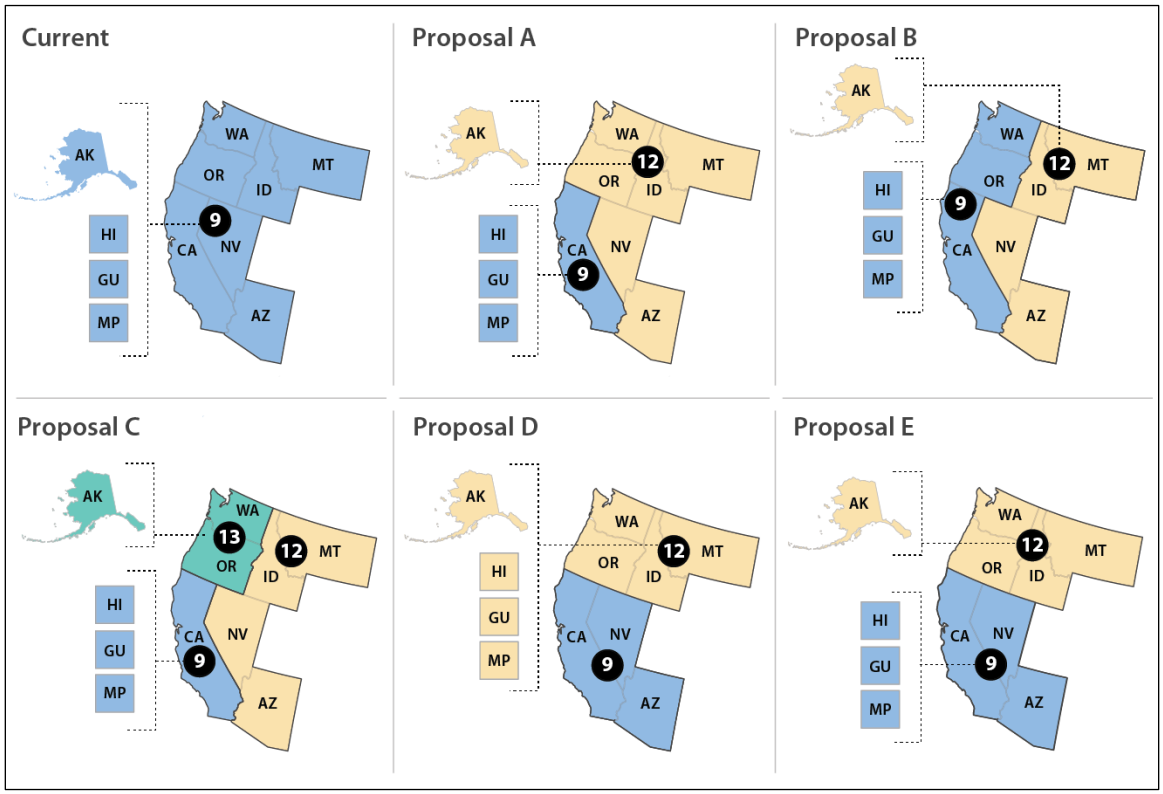
[49] The most recent legislation proposing this particular division of the Ninth Circuit was introduced on June 8, 2023, during the 118th Congress (see S. 1878).

comprised of Alaska, Arizona, Idaho, Nevada, and Montana.[50] Under these proposed lines, the Ninth Circuit would have a current population of 52.7 million (ranking 1st in population among the 13 regional circuits) and the Twelfth Circuit a population of 14.5 million (ranking 11th).

Under Proposal C, the Ninth Circuit would be divided into three regional circuits (rather than two).[51] The Ninth Circuit would be comprised of California, Hawaii, Guam, and the Northern Mariana Islands. A new Twelfth Circuit would be comprised of Arizona, Idaho, Montana, and Nevada, while a new Thirteenth Circuit would be comprised of Alaska, Oregon, and Washington. Under these proposed lines, the Ninth Circuit would have a current population of 40.6 million (ranking 1st in population among the 14 regional circuits), the Twelfth Circuit a population of 13.7 million (ranking 12th), and the Thirteenth Circuit a population of 12.8 million (ranking 13th).

Figure 2. Five Most Common Legislative Proposals to Reorganize the Geographic Boundaries of the U.S. Court of Appeals for the Ninth Circuit

(1963-2024)



Source: Congressional Research Service compilation of legislation using Congress.gov.

Under Proposal D, the Ninth Circuit would be comprised of Arizona, California, and Nevada, while a new Twelfth Circuit would be comprised of Alaska, Hawaii, Idaho, Montana, Oregon,

[50] The most recent legislation proposing this particular division of the Ninth Circuit was introduced on January 9, 2023, during the 118th Congress (see H.R. 88).

[51] The most recent legislation proposing this particular division of the Ninth Circuit was introduced on June 23, 2005, during the 109th Congress (see S. 1301).

Washington, Guam, and the Northern Mariana Islands.[52] Under these proposed lines, the Ninth Circuit would have a current population of 49.6 million (ranking 1st in population among the 13 regional circuits) and the Twelfth Circuit a population of 17.5 million (ranking 11th).

Under Proposal E, the Ninth Circuit would be comprised of Arizona, California, Hawaii, Nevada, Guam, and the Northern Mariana Islands, while a new Twelfth Circuit would be comprised of Alaska, Idaho, Montana, Oregon, and Washington.[53] Under these proposed lines, the Ninth Circuit would have a current population of 51.2 million (ranking 1st in population among the 13 regional circuits) and the Twelfth Circuit a population of 15.9 million (ranking 11th).

Committee Hearings

For the period from 1963 to 2024, CRS identified at least 13 committee or subcommittee hearings related to legislative proposals to divide the Ninth Circuit into two or more regional circuits.[54] Of the 13 hearings, 10 were held by the Senate Judiciary Committee or one of its subcommittees and 3 by the House Judiciary Committee or one of its subcommittees.

The most recent hearing was held on September 20, 2006, during the 109th Congress by the Senate Judiciary Committee. The hearing included 13 witnesses and 41 submissions for the record, including submissions by the Alaska Bar Association, American Bar Association, Arizona State Bar, California State Bar, Montana State Bar, and Hispanic National Bar Association.

The bill's sponsor, Senator John Ensign of Nevada, asked during the hearing "At what point in the future is the Ninth Circuit too large? At what point is it unmanageable?"[55] He further stated that

> Judges have related to me that that is one of the reasons they believe the circuit should be split—not because of ideology. The split is justified simply because of the time that is needed to consider the cases. So for the sake of the administration of justice, not only the efficiency but also in the types of decisions that can be made, I think it is time to split up the Ninth Circuit. It is time for us to go to something that is more manageable where our judges have time to consider the cases in a much more detailed fashion.[56]

Senator Ensign also acknowledged the "additional cost" of dividing the Ninth Circuit but stated that such costs could "be held to a minimum" by noting that there are existing buildings in Portland and Seattle that could be remodeled for the purpose of housing the new circuit's headquarters (as well as buildings in Las Vegas and Phoenix that could be used to conduct the new circuit's judicial business).[57]

[52] The most recent legislation proposing this particular division of the Ninth Circuit was introduced on January 4, 2005, during the 109th Congress (see H.R. 212).

[53] The most recent legislation proposing this particular division of the Ninth Circuit was introduced on March 12, 1997, during the 105th Congress (see S. 431).

[54] This does not include hearings related to legislation that would authorize the creation of a commission to determine whether or not one or more regional circuits should be reorganized or divided.

[55] Senate Judiciary Committee, S.Hrg. 109-1035, "Examining the Proposal to Restructure the Ninth Circuit," hearing on S. 1845, 109th Cong., September 20, 2006, p. 12.

[56] Ibid., p. 13.

[57] Ibid., p. 12.

Senator Lisa Murkowski of Alaska, a cosponsor of Senator Ensign's legislation,[58] emphasized the Ninth Circuit's relatively large geographic size, as well as its large population size.[59] She also noted that "the Ninth Circuit docket is one that just continues to grow" and that the circuit lagged behind the national average in terms of the length of time to reach the final disposition of a case.[60] Senator Murkowski also stated that "some have suggested that the improvements through technology can help us control the overwhelming case load of the Ninth Circuit…. But I see literally a tidal wave coming towards the court that technology is not going to help us get around. And this is just simply population growth."[61]

Other Senators expressed their opposition to dividing the Ninth Circuit. Senator Dianne Feinstein of California stated her belief that changing the geographic boundaries of the circuit "should be guided by concerns of efficiency and administration, not ideology."[62] She concluded that "after a substantial review of statistics, decisions, and reports from those who know the circuit best, it is clear that splitting the Ninth would hinder its mission of providing justice to the people of the West."[63] Additionally, she argued, that the "size of the Ninth is an asset. It offers a unified legal approach to issues from immigration to the environment, and dividing the circuit would make these problems more difficult to solve."[64] Senator Feinstein also emphasized that such a split was opposed at the time by 18 of 27 active judges on the Ninth Circuit, most of the district court and bankruptcy judges serving in the circuit, and every state bar within the circuit that had weighed in on the issue (those of Alaska, Arizona, Hawaii, Montana, Nevada, Oregon, and Washington).[65]

Senator Feinstein also discussed the potential cost of dividing the Ninth Circuit, stating

> It would require additional Federal funds to duplicate the current staff of the Ninth and new or expanded courthouses and administrative buildings since existing judicial facilities for a Twelfth are inadequate. The Administrative Office of the U.S. Courts estimates that creating a Twelfth Circuit would have a start-up cost of $96 million, with another $16 million in annual recurring costs.[66]

Senator Max Baucus of Montana also stated his opposition to the legislation, arguing that the Ninth Circuit's relatively large geographic and population size "alone are not good reasons for splitting what is currently a very productive court of appeals."[67] Additionally, Senator Baucus noted the cost associated with dividing the circuit and argued that

> the Ninth Circuit is one of the fastest circuits in the Nation in resolving cases once the case is actually heard by the court. The delays in processing are caused by the number of cases referred to the court, and these cases are mostly immigration appeals. Splitting the circuit will not resolve this problem. It will not reduce the number of immigration appeals.[68]

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[58] Other cosponsors of the legislation included Sens. Burns (Montana), Craig (Idaho), Crapo (Idaho), Inhofe (Oklahoma), Kyl (Arizona), Smith (Oregon), and Stevens (Alaska).

[59] Senate Judiciary Committee, S.Hrg. 109-1035, "Examining the Proposal to Restructure the Ninth Circuit," hearing on S. 1845, 109th Cong., September 20, 2006, p. 10.

[60] Ibid., p. 11.

[61] Ibid.

[62] Ibid., p. 5.

[63] Ibid.

[64] Ibid.

[65] Ibid., p. 6.

[66] Ibid.

[67] Ibid., p. 7.

[68] Ibid.

Senator Baucus also emphasized that "splitting the Ninth would eliminate uniformity of law in the West.... States sharing common concerns, such as environment and Native American rights, would end up with different rules of law."[69]

The committee's witnesses expressed different views as to whether the Ninth Circuit should be divided. For example, Judge Mary Schroeder, who at the time was serving as the chief circuit judge of the Ninth Circuit, stated that her opposition to the legislation was, in part, because the "bill would leave California alone with Hawaii in a circuit containing more than 70 percent of the cases in our circuit, too few judges, much of the Pacific Ocean, and only four Senators, leaving it difficult to get resources in the future."[70]

In contrast, Judge John Roll, who was serving as chief district judge for the U.S. District Court for the District of Arizona, expressed his support for the legislation. He stated that the Ninth Circuit is "the slowest circuit in the country in decisional time, which is the time from the filing of notice of appeal to the time of disposition. That is the time that matters to litigants."[71] He also emphasized that the new Twelfth Circuit would "look like most other circuits," in terms of its population size, caseload, and case-to-judge ratio.[72]

Floor Statements

Some Members have also given floor statements related to some of the legislative proposals to divide the Ninth Circuit.[73] In 2017, for example, Senator Jeff Flake of Arizona introduced legislation to divide the Ninth Circuit.[74] In a floor statement in support of his proposal, Senator Flake stated

> one of the most important elements of the rule of law is the promise of swift access to the courts, but that promise has been broken in my home State of Arizona.... With the jurisdiction encompassing 13 districts spread across nine States and 2 U.S. territories, the Ninth Circuit covers 1 in 5 Americans. It hears roughly 12,000 appeals each year. The next busiest circuit doesn't even hear 9,000, and for the thousands of cases under its consideration, the average turnaround time exceeds 15 months.... The court, itself, is unusually large. It has 29 authorized judgeships. That is 12 more than the next largest circuit. The Ninth Circuit is so big that it can't even rehear cases as a whole body, like every other appeals court does. Instead, cases are reheard with limited en banc; these are panels of 11 judges each. That means that only one-third of its judges are deciding law for the entire court—only one-third.[75]

In 2016, Senator Dan Sullivan of Alaska similarly made a floor statement in support of legislation that he and Senator Daines of Montana introduced to divide the Ninth Circuit.[76] Senator Sullivan

[69] Ibid.

[70] Ibid., p .22

[71] Ibid., p. 28.

[72] Ibid., pp. 28-29.

[73] This section provides examples of several floor statements made in support of, and in opposition to, dividing the Ninth Circuit and is not an exhaustive overview of such statements.

[74] See S. 276, Judicial Administration and Improvement Act of 2017, 115th Cong., February 2, 2017.

[75] Statements on Introduced Bills and Joint Resolutions, *Congressional Record*, vol. 163, no. 18 (February 2, 2017), p. S657.

[76] See S. 2477, Circuit Court of Appeals Restructuring and Modernization Act, 114th Cong., February 1, 2016.

argued that, because of the circuit's large size and workload, "one in five Americans do not get equal justice under the law."[77] Senator Sullivan stated

> Dividing the Ninth Circuit is not a new idea. In fact, not doing it is radical. If you look at the history of the United States, when Federal courts of appeals have grown in terms of population, what has happened every time for decades, for well over 100 years, is that when the court grows too big and the administration of justice grinds to a halt, the court is split so that you have that justice. That is the usual course of American history. What is not usual is the refusal to do this.[78]

Senator Sullivan also highlighted, as discussed by Senator Flake, the circuit's use of limited en banc panels. Senator Sullivan argued

> Every court in the U.S. Federal system, in order to have uniformity of law, when they have difficult issues, they meet as a court in what they call an en banc meeting. This provides uniformity in all the courts. There is only one court that doesn't do that. Because it has 29 judges—much more than any other court—the Ninth Circuit does not meet as a whole court; therefore, limiting its ability to address intracircuit conflicts.[79]

In 2004, some Members also debated whether to divide the Ninth Circuit during consideration of an amendment to legislation that authorized new circuit and district court judgeships.[80] The amendment, offered by Representative Mike Simpson of Idaho, would have divided the Ninth Circuit into three separate circuits—the Ninth (comprised of California, Hawaii, Guam, and the Northern Mariana Islands), the Twelfth (comprised of Arizona, Nevada, Idaho, and Montana), and the Thirteenth (comprised of Alaska, Oregon, and Washington).

In support of his amendment, Representative Simpson argued that "it is inevitable that the Ninth Circuit will be split. At some point in time, whether it is with this bill or some other bill in the future, the need to split the Ninth Circuit is undeniable."[81] He further stated that "the reason to split a court is for administrative purposes" and that the Ninth Circuit "has the most number of appeals filed and the highest percentage of increases in appeals filed, the most number of appeals still pending and the longest median time until disposition of those appeals."[82] Representative Simpson also noted the relatively large number of judges serving in the circuit and discussed the en banc issue as it relates to the circuit, stating

> In every other circuit, when there is an appeal of the three-judge decision en banc to the full court, all the judges of that circuit sit and listen to the case, even those on the three-judge panel, so that they can have their points of view inserted into that discussion of the case. In the Ninth Circuit, that is not the case. It is so large that they pull names out of a hat, and 10 members and the chief sit en banc. One may or may not be chosen for it. Individuals that sat on the three-judge panel and listened to it may not even be on the en banc panel; and consequently they cannot have their views inserted as to why they decided the way they did as a three-judge panel. So justice is different in the Ninth Circuit. I think it should be uniform.[83]

Representative Jim Sensenbrenner of Wisconsin, who at the time was chairman of the House Judiciary Committee, also spoke in support of the amendment, citing the circuit's relatively large

[77] Equal Justice Under the Law, *Congressional Record*, vol. 162, no. 22 (February 8, 2016), p. S698.

[78] Ibid.

[79] Ibid.

[80] See H.Amdt. 780 to S. 878, 108th Cong., October 5, 2004.

[81] *Congressional Record*, vol. 150, no. 124 (October 5, 2004), p. H8055.

[82] Ibid.

[83] Ibid.

population, geographic size, and heavy caseload. He stated "this is an idea whose time has come. If we delay adopting this amendment, we are just going to have more administrative problems caused by higher caseloads."[84]

Other Members spoke in opposition to the amendment, including Representative Zoe Lofgren of California. She argued that

> The Ninth Circuit is not broken. Although the Ninth Circuit contains the largest number of judges of any Federal circuit, the ratio of published opinions to the number of judgeships is well within what is applicable to other circuits. It is also worth noting that the circuit judges in the Ninth Circuit take only 1.4 months to decide cases following argument, while the national average is 2.1 months.[85]

Representative Adam Schiff of California also spoke in opposition to the amendment, noting that "division of the circuit is strongly opposed by a bipartisan coalition of judges and officials."[86] He also argued that

> Circuit division would eliminate a number of important advantages that come from a large circuit. It would eliminate the ability to transfer judges from one district to another within the same circuit to deal with fluctuating caseloads. It would reduce the number of circuit judges available to decide the cases from the growing border of districts from Arizona and southern California.[87]

Representative Simpson's amendment was agreed to by a vote of 205-194 but the amended legislation, which had previously passed the Senate without the amendment to divide the Ninth Circuit, was not considered again by the Senate.[88]

Congressionally Established Commissions

On two occasions, Congress has established commissions to examine whether to change the geographic boundaries of U.S. circuit courts, with the work of both commissions focused primarily on the boundaries of the Ninth Circuit.[89]

Hruska Commission

In 1972, Congress created the Commission on the Revision of the Federal Court Appellate System.[90] The commission, chaired by Senator Roman Hruska of Nebraska, recommended that

[84] Ibid., p. H8057.

[85] Ibid., p. H8049.

[86] Ibid.

[87] Ibid.

[88] The Senate-passed legislation would have authorized 12 new permanent district court judgeships, converted 2 temporary district court judgeships to permanent judgeships, and created 2 new temporary district court judgeships.

[89] This discussion does not include studies conducted by the judiciary itself to examine the issue of geographically dividing one or more judicial circuits. For example, the Judicial Conference of the United States issued a report during the 104th Congress stating that a circuit should only be restructured "if compelling empirical evidence demonstrates adjudicative or administrative dysfunction in a court so that it cannot continue to deliver quality justice and coherent consistent circuit law in the fact of increasing workload." Judicial Conference of the United States, *Long Range Plan for the Federal Courts* (Washington, DC, 1995), p. 44.

[90] See 86 Stat. 807 (1972). The commission was comprised of four Senators, four House Members, four presidential appointees, and four appointees of the Chief Justice.

the both the Fifth and Ninth Circuits be divided.[91] In making its recommendation to split the Ninth Circuit, the commission focused on the circuit's heavy workload, stating

> The Ninth Circuit today handles more cases annually than any circuit other than the beleaguered Fifth. Since 1968 the number of appeals filed each year has consistently exceeded the number of terminations, resulting in a backlog...enough to keep the court busy for a full year even if no new cases were filed. Delays in the disposition of civil cases, often of two years or more, have seriously concerned both judges and members of the bar. The size of the court … and the extensive reliance it has been required to place on the assistance of district and visiting judges have threatened its institutional unity.[92]

The Hruska Commission proposed a new Ninth Circuit comprised of the Northern District of California, the Eastern District of California, Alaska, Washington, Oregon, Idaho, Montana, Hawaii, and Guam.[93] A new Twelfth Circuit would have been comprised of the Southern District of California, the Central District of California, Arizona, and Nevada.[94] The commission acknowledged that the "division of a state between two circuits would be an innovation in the history of the federal judicial system" but stated that any problems related to conflicting decisions as to the validity of state statutes or practices under federal law "can be resolved by existing mechanisms and others that could be readily developed."[95] The commission also concluded that such an arrangement was preferrable to creating a single-state circuit (e.g., placing California in its own circuit) and that, because of relatively low circuit workload at the time among the five northwestern states within the Ninth Circuit, a separate circuit comprised of those states was not warranted.[96]

White Commission

The most recent commission to examine the geographic boundaries of the Ninth Circuit was established by Congress in 1997.[97] Specifically, the Commission on Structural Alternatives for the Federal Court of Appeals, chaired by then-retired Associate Justice Byron R. White, was directed by Congress to study the structure and alignment of the federal appellate system, with a particular focus on the Ninth Circuit.[98] Congress created the commission "in the wake of controversy over whether the court of appeals for the Ninth Circuit—the largest federal court of appeals—has grown to a point that it cannot function effectively and whether, in response, Congress should split the Ninth Circuit to create two or more smaller courts."[99]

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[91] As discussed above, Congress eventually divided the Fifth Circuit in 1980 by transferring Alabama, Florida, and Georgia to a new Eleventh Circuit.

[92] U.S. Commission on Revision of the Federal Court Appellate System, *The Geographical Boundaries of the Several Judicial Circuits: Alternative Proposals*, Report, November 1973, p. 11.

[93] Ibid., p. 12.

[94] Ibid.

[95] Ibid., p. 14.

[96] Ibid., p. 14, p. 19. There have been three legislative proposals to divide the Ninth Circuit in the manner recommended by the Hruska Commission, with the most recent proposal introduced in 1993 (103rd Cong.) by Rep. Mike Kopetski of Oregon. See H.R. 3654, November 22, 1993.

[97] See Departments of Commerce, Justice and State, the Judiciary, and Related Agencies Appropriations Act of 1998, P.L. 105-119 §305, 111 Stat. 2440, 2491-93 (1997).

[98] The five members of the commission were appointed by Chief Justice William H. Rehnquist. The members included retired Associate Justice Byron White, two circuit court judges, one district court judge, and a past president of the American Bar Association.

[99] *Report by the Commission on Structural Alternatives for the Federal Courts of Appeals*, December 18, 1998, p. ix, https://library.unt.edu/gpo/csafca/final/appstruc.pdf.

The White Commission was directed to submit, by December 18, 1998, its final recommendations to the President and Congress "on changes in circuit boundaries or structure as may be appropriate for the expeditious and effective disposition of the appellate caseload, consistent with fundamental concepts of fairness and due process."[100] The commission conducted six public hearings, received more than 90 written comments, issued a draft report in October 1998 and—after receiving additional comments on the draft—submitted its final report.[101]

The report emphasized what it considered as the administrative and legal benefits of the circuit's current configuration, stating that "splitting the Ninth Circuit itself would be impractical and is unnecessary. As an administrative entity, the circuit should be preserved without statutory change."[102] Additionally, the report stated that the "circuit's court of appeals should continue to provide the West a single body of federal decisional law."[103]

The report concluded that

> there is no persuasive evidence that the Ninth Circuit or any other circuit for that matter is not working effectively or that creating new circuits will improve the administration of justice in any circuit or overall. Furthermore, splitting the circuit would impose substantial costs of administrative disruption, not to mention the monetary costs of creating a new circuit. Accordingly, we do not recommend to Congress and the President that they consider legislation to split the circuit.[104]

While the White Commission recommended that the boundaries of the Ninth Circuit remain unchanged, there has been continued congressional interest in dividing the circuit into two or more circuits. Since the commission's report was issued in December 1998, a total of 46 legislative proposals have been introduced in the Senate or the House to restructure the boundaries of the Ninth Circuit.

Selected Considerations for Congress

The issue of whether to divide the Ninth Circuit, or any other regional circuit, may continue to be of ongoing interest to Congress, especially as the nation's population continues to increase. By 2040, for example, the population of the Ninth Circuit may reach 80.7 million—an increase of 20% over the circuit's current population.[105] Discussed below are several issues that might be useful considerations for Congress on the topic of reorganizing the Ninth Circuit (or regional circuits, more generally). This is not a comprehensive list of policy issues that Congress might consider relevant in determining whether to reorganize a circuit (e.g., not discussed below is whether a regional circuit might be reorganized for reasons related to the circuit's jurisprudence).

[100] §305(a)(1)(B)(iii), P.L. 105-119, 111 Stat. 2491.

[101] *Report by the Commission on Structural Alternatives for the Federal Courts of Appeals*, December 18, 1998, pp. 2-4, https://library.unt.edu/gpo/csafca/final/appstruc.pdf.

[102] Ibid., p.iii.

[103] Ibid.

[104] Ibid., p. 29. The commission issued and discussed a recommendation for Congress to "restructure" the Ninth Circuit "into smaller, regionally based divisions—adjudicative divisions—each division to decide appeals arising within its region." Ibid., pp. 30-32. The recommendation is explained further in the final section of this report.

[105] The source for 2040 state population projections is the Weldon Cooper Center for Public Service, University of Virginia, https://www.statista.com/statistics/312714/us-projected-state-population-by-state. The source for the 2040 population projections for Guam and the Northern Mariana Islands is the World Bank DataBank, https://databank.worldbank.org/home.

Relevance of Geographic Size and Population Size

With many technological changes since Congress last divided a regional circuit in 1980, Congress may face several questions regarding the relevance of geographic size and population size in determining whether a circuit might be reorganized. Is a circuit's relative geographic size still as relevant a consideration in deciding whether it should be reorganized? Or is a more important consideration a circuit's relative population size? If both remain important considerations, is there a way to reorganize the Ninth Circuit that would eliminate the need to revisit the issue in the future?

What precedent, if any, would reorganizing the Ninth Circuit establish for congressional consideration of changes to the geographic boundaries of other circuits, particularly those with relatively high population growth? The Fourth Circuit, for example, is comprised of five states and has a current population of 32.9 million. Since 1990, when Congress last authorized judgeships for the circuit, its population has increased by 44% (from 22.9 million).[106] As the Fourth Circuit's population likely continues to increase, might congressional consideration of changing its boundaries be informed by a potential reorganization of the Ninth Circuit?[107]

Both the Hruska Commission and White Commission concluded that no regional circuit should consist of fewer than three states (apart from the District of Columbia). The White Commission stated "Courts of appeals in regional circuits of only one or two states are unlikely to be able to fulfill the federalizing function that the nation expects of its intermediate courts of appeals. Applying that principle, there are now eight circuits (not counting the D.C. Circuit) that cannot be split."[108] The White Commission also emphasized, however, that action to reduce the geographic size of a circuit "should not be taken unless there is no other means of responding to perceived problems in the court of appeals and of creating an effective adjudicative structure within the existing circuit boundaries."[109]

Use of Caseload Statistics

Congress may face questions regarding a circuit's workload when deciding whether that circuit might be reorganized. When deciding whether to divide a circuit, which statistics related to a circuit's workload are the most important? What is the appropriate time frame to consider these particular statistics in order to determine whether a court is consistently burdened by a heavy caseload?

In making its biennial recommendation to Congress for new circuit court judgeships, the Judicial Conference of the United States relies, in part, on a statistic known as "adjusted filings per panel." The statistic is calculated by removing reopened appeals and counting original pro se appeals as one-third of a case. The adjusted filings per panel statistic for the Ninth Circuit based on the conference's 2023 biennial judgeship survey was 656 (the conference standard is 500 adjusted filings per panel).[110] Based on the elevated number of adjusted filings per panel for the

[106] The Fourth Circuit's 1990 population figure is based on state population totals provided by the U.S. Census Bureau, "Intercensal Estimates of the Total Resident Population of States: 1980 to 1990," https://www2.census.gov/programs-surveys/popest/tables/1980-1990/state/asrh/st8090ts.txt.

[107] Such a change, for example, would not require the creation of a new circuit but could also occur by transferring one or more states to an existing regional circuit (e.g., West Virginia might be transferred to the Third or Sixth Circuit).

[108] *Report by the Commission on Structural Alternatives for the Federal Courts of Appeals*, December 18, 1998, p. x.

[109] Ibid.

[110] Administrative Office of U.S. Courts, *Article III Judgeship Recommendations of the Judicial Conference 2023*, "Appendix 3, Ninth Circuit," pp. 2-3.

Ninth Circuit, the conference recommended that the circuit receive two new permanent judgeships (it did not recommend additional judgeships for any other circuit).[111]

Congress might consider many other caseload statistics—either individually or in combination with one another—when measuring a circuit's workload. Depending on which statistics are considered the most important in measuring a circuit's workload, such statistics might be used to support or oppose the reorganization of that circuit.

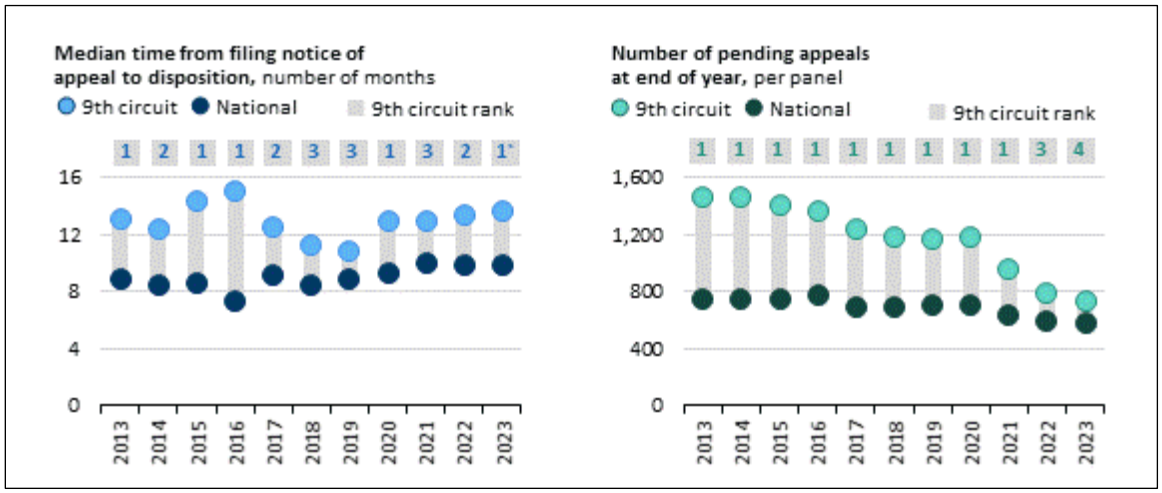
Figure 3 provides examples of two caseload statistics that are routinely reported by the Administrative Office of U.S. Courts: (1) the median time, in number of months, from filing a notice of appeal to disposition of an appeal and (2) the number of pending appeals, per three-judge panel, at the end of a calendar year.

For the period from 2013 through 2023, **Figure 3** compares the national average for each of these caseload statistics (across all regional circuits) with the corresponding statistic for the Ninth Circuit. So, for example, in 2013, the national median time from filing notice of appeal to disposition of the appeal was 8.9 months, while for the Ninth Circuit it was 13.1 months. Similarly, in 2013, the national average number of pending appeals per three-judge panel at the end of the calendar year was 752, while for the Ninth Circuit it was 1,466.

The figure also shows how the Ninth Circuit ranked each year for each caseload statistic. During the 2013-2023 period, the circuit ranked first, second, or third each year in the median length of time from filing notice of appeal to disposition of an appeal. For the number of pending appeals at the end of a calendar year, the circuit ranked first, third, or fourth during this same period (ranking first each year except in 2022 and 2023).

Figure 3. Comparative Caseload Statistics for the Ninth Circuit

(2013-2023)



Source: CRS compilation of publicly available data published by the Administrative Office of U.S. Courts.

[111] Administrative Office of U.S. Courts, "Additional Judgeships or Conversion of Existing Judgeships Recommended by the Judicial Conference 2023," https://www.uscourts.gov/sites/default/files/2023_judicial_conference_judgeship_recommendations_0.pdf.

Views of Judicial Stakeholders

Numerous judicial stakeholders—such as judges, attorneys, and legal organizations—often convey their views on various issues to Congress. When Congress considers whether to reorganize a regional circuit, how might Members take the views of judicial stakeholders into consideration? To what extent, if any, is it considered important for there to be an institutional consensus between Congress and the federal judiciary when it comes to changing the geographic boundaries that provide a legal and administrative framework for a court's judicial business?

As discussed above, when Congress divided the Eighth Circuit in 1929 and the Fifth Circuit in 1980, there was broad support for each change by the various judicial stakeholders impacted by the legislation. Such support was expressed by most of the circuit and district court judges serving within each of the affected circuits (the Eighth and Fifth), the American Bar Association, and most of the state bar associations in the affected states. Additionally, in the case of the 1929 legislation, the Chief Justice of the United States expressed support for reorganizing the Eighth Circuit during a House Judiciary Committee hearing. Chief Justice William Taft stated that the

> outstanding evil in the present system is the size of the Eighth Circuit.... My own impression is that the best thing to do, if you want to do something that can be done at once and not involve conflicting considerations is merely to divide the eighth circuit and let all the other circuits stand as they are.... When you have divided that, you will have avoided the one feature in the present situation that is objectionable.[112]

Financial Cost

Congress may face questions of cost when deciding whether a circuit might be reorganized. What are the potential short-term and long-term financial costs of reorganizing the Ninth Circuit? Are there ways to minimize these potential costs?

There has not been a recent public estimate of the potential costs associated with changing the geographic boundaries of the Ninth Circuit. Examples of potential costs associated with dividing the circuit might include expenses related to authorizing additional judgeships, hiring or relocating judicial staff, and acquiring or constructing courthouses and other facilities.

During the 2006 committee hearing discussed in the text above, Senator Dianne Feinstein of California stated that, according to estimates provided by the Administrative Office of U.S. Courts, dividing the Ninth Circuit would have a start-up cost of $96 million, with another $16 million in annual recurring costs (this start-up estimate was later disputed by one of the committee's witnesses).[113] Senators disagreed during the hearing as to the extent and implications of such costs. Senator Feinstein, for example, argued that "splitting the circuit would add significant and unnecessary expense,"[114] while Senator John Ensign of Nevada argued that such

[112] 70th Cong., Serial 23—Part 2, House Committee on the Judiciary, "To Create a Tenth Circuit," May 10, December 4, 1928, January 11, 1929, pp. 66-67. At the time, Congress was also considering dividing the Second Circuit by including New York in its own circuit and transferring Vermont and Connecticut to the First Circuit. The Chief Justice expressed opposition to that plan. Ibid., p. 66.

[113] Senate Judiciary Committee, S.Hrg. 109-1035, "Examining the Proposal to Restructure the Ninth Circuit," hearing on S. 1845, 109th Cong., September 20, 2006, p. 6. Circuit judge Diarmuid O'Scannlain later testified that "most administrative costs would be amply set off by reducing the size of the old circuit," there would be "absolutely no need whatsoever for new courthouses to be built," and that the estimate provided by the Administrative Office of U.S. Courts "is a red herring." Ibid., p. 27.

[114] Ibid., p. 6.

costs could be "held to a minimum" by using existing facilities in Seattle and other cities to conduct the judicial business of the proposed new circuit.[115]

In 1980, when Congress reorganized the Fifth Circuit into two circuits, the Congressional Budget Office estimated that implementation of the bill, based on the authorization of five additional judgeships, would cost approximately $223,000 in FY1981, $232,000 in FY1982, $238,000 in FY1983, $242,000 in FY1984, and $247,000 in FY1985.[116] The House report accompanying the legislation stated that the "federal treasury will be saved the expense of transporting judges and their staffs all over the Circuit from West Texas to South Florida."[117] The report cited additional savings, such as "eliminating the number of copies of everything that is done."[118] Additionally, in a prepared statement included in the report, Representative Daniel Mica of Florida stated the "Fifth Circuit already has an office building in Atlanta that could become the headquarters of the new Eleventh Circuit Court. The administrative costs involved will easily be made up in reduced transportation, communication, and duplication expenses, not to mention the savings in time."[119]

Option of Adjudicative Divisions

Congress may decide to consider the option of adjudicative divisions. How can the use of "adjudicative divisions" within the Ninth Circuit best serve as an alternative to dividing the circuit? Could the creation of such divisions address some of the issues of concern to Members, such as the circuit's workload and its en banc process?

In its report to Congress, the White Commission recommended the following:

- "To improve the consistency and coherence of that court's decisions ... Congress should restructure it into smaller, regionally based divisions—adjudicative divisions—each division to decide appeals arising within its region.
- Each regional division should have from 7 to 11 active circuit judges. A majority should reside in the division, but some should serve for a term in a division other than where they reside to enhance interdivisional consistency.
- Each regional division should perform an en banc function as if it were a court of appeals. The circuit-wide en banc process should be abolished.
- A 'Circuit Division,' with 13 judges from all regional divisions, serving for limited terms in addition to their regular assignments, should resolve conflicts between the regional divisions.
- Recourse from decisions of regional divisions, except when the Circuit Division exercises its discretion to resolve interdivisional conflicts, and from Circuit Division decisions, should be to the Supreme Court."[120]

As part of its report, the commission also recommended that, in order to avoid the costs and disruption of dividing other regional circuits in the future, Congress should enact legislation to

[115] Ibid., p. 12.

[116] H.Rept. 96-1390 (to accompany H.R. 7665), 96th Cong. (1979-1980), "Fifth Circuit Court of Appeals Reorganization Act of 1980," p. 441, September 25, 1980. After adjusting for inflation, the equivalent amounts for September 2024 would be approximately $903,755, $940,229, $964,545, $980,756, and $1,001,020, respectively.

[117] Ibid., p. 54.

[118] Ibid.

[119] Ibid., p. 242. CRS did not identify any statements by Members who were concerned with the potential or actual costs associated with dividing the Fifth Circuit.

[120] Ibid, p.iii.

authorize any circuit court with more than 15 authorized judgeships to restructure the circuit into smaller adjudicative divisions.[121]

In making its recommendations, the White Commission emphasized the distinction between the regional circuit, as an administrative entity, and the court of appeals itself. The commission stated

> Circuits do not decide cases; they are administrative, not adjudicative, entities with responsibilities for governance that are broader than—and have little to do with—the court of appeals itself.... Since the court of appeals is distinct from the circuit, the court of appeals can be restructured—by creating adjudicative divisions—without splitting the circuit.[122]

Congress has not authorized a commission to study the feasibility of such an approach to addressing Members' concerns with the Ninth Circuit.[123] In lieu of, or in addition to, legislative efforts to divide the Ninth Circuit, Congress might also consider a commission that examines the benefits and drawbacks of dividing the Ninth Circuit (and perhaps other populous circuits, such as the Eleventh Circuit) into adjudicative divisions as recommended by the White Commission.

Combination of Reorganizing the Ninth Circuit and Authorizing Additional Judgeships

Congress could address the potential need for additional circuit court judgeships at the same time as it potentially considers dividing the Ninth Circuit. Or Congress could decide to authorize additional circuit court judgeships without dividing the circuit.

Congress has not reorganized a regional circuit since 1980. Additionally, Congress has not authorized any new permanent circuit court judgeships since 1990. This represents the longest period of time since the creation of the U.S. courts of appeals in 1891 that Congress has not authorized any new circuit court judgeships.[124]

One possible approach to increasing the number of circuit court judgeships is to combine such an increase with dividing the Ninth Circuit into two or more smaller circuits. Such an increase in the number of judgeships might also include additional circuit court judgeships for regional circuits not affected by a reorganization of the Ninth Circuit.[125]

This approach might lend itself to Congress considering such issues as whether to limit the number of states in a circuit or whether to establish a standard for increasing the number of judgeships authorized for a circuit when it reaches certain population thresholds.

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[121] Ibid. The commission further stated that the "need to restructure will vary among the circuits, but as courts reach 18 to 20 judgeships, the need for restructuring becomes especially compelling, in order to maintain consistency and coherence." Ibid. At present, there are no circuit courts, apart from the Ninth Circuit, with at least 18 authorized judgeships.

[122] Ibid., pp. 29-30.

[123] During the 106th Congress, legislation was introduced to organize the Ninth Circuit into three regional divisions. See S. 253 (January 19, 1999). The Subcommittee on Administrative Oversight and the Courts of the Senate Judiciary Committee held a hearing on the proposal. See S.Hrg. 106-681, "Review of the Report by the Commission on Structural Alternatives for the Federal Courts of Appeals Regarding the Ninth Circuit and the Ninth Circuit Reorganization Act," Examining the Proposal to Restructure the Ninth Circuit," July 16, 1999.

[124] The second-longest period during which Congress did not authorize any new U.S. circuit court judgeships was the 17-year period from 1905 through 1921 (when there were 32 circuit court judgeships). For additional information, see CRS Report R45899, *Recent Recommendations by the Judicial Conference for New U.S. Circuit and District Court Judgeships: Overview and Analysis*, by Barry J. McMillion.

[125] See, for example, S. 5229 (September 25, 2024).

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