

**AMENDMENT TO S. 878, AS REPORTED  
OFFERED BY MR. SIMPSON OF IDAHO**

Insert after section 5 the following new section:

1 **SEC. 6. NINTH CIRCUIT REORGANIZATION.**

2 (a) **SHORT TITLE.**—This section may be cited as the  
3 “Ninth Circuit Judgeship and Reorganization Act of  
4 2004”.

5 (b) **DEFINITIONS.**—In this section:

6 (1) **FORMER NINTH CIRCUIT.**—The term  
7 “former ninth circuit” means the ninth judicial cir-  
8 cuit of the United States as in existence on the day  
9 before the effective date of this section.

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

14 (3) **TWELFTH CIRCUIT.**—The term “twelfth cir-  
15 cuit” means the twelfth judicial circuit of the United  
16 States established by the amendment made by sub-  
17 section (c)(2)(B).

18 (4) **THIRTEENTH CIRCUIT.**—The term “thir-  
19 teenth circuit” means the thirteenth judicial circuit  
20 of the United States established by the amendment  
21 made by subsection (c)(2)(B).



1 (c) NUMBER AND COMPOSITION OF CIRCUITS.—Sec-  
2 tion 41 of title 28, United States Code, is amended—

3 (1) in the matter preceding the table, by strik-  
4 ing “thirteen” and inserting “fifteen”; and

5 (2) in the table—

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

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

8 and

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

“Twelfth ..... Arizona, Nevada, Idaho, Montana.

“Thirteenth ..... Alaska, Oregon, Washington.”.

11 (d) PLACES OF CIRCUIT COURT.—The table con-  
12 tained in section 48(a) of title 28, United States Code,  
13 is amended—

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

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

16 and

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

“Twelfth ..... Las Vegas, Phoenix.

“Thirteen ..... Portland, Seattle.

19 (e) ASSIGNMENT OF CIRCUIT JUDGES.—Each circuit  
20 judge of the former ninth circuit who is in regular active



1 service and whose official duty station on the day before  
2 the effective date of this section—

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

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

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

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

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

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

23 (2) who elects to be assigned under subsection

24 (f),



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

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

7 (1) If the matter has been submitted for deci-  
8 sion, further proceedings with respect to the matter  
9 shall be had in the same manner and with the same  
10 effect as if this section had not been enacted.

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

23 (3) A petition for rehearing or a petition for re-  
24 hearing en banc in a matter decided before the effec-  
25 tive date of this section, or submitted before the ef-



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

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

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

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

23       “(e) The chief judge of the Thirteenth Circuit may,  
24      in the public interest and upon request by the chief judge  
25      of the Ninth Circuit or the Twelfth Circuit, designate and



1 assign temporarily any circuit judge of the Thirteenth Cir-  
2 cuit to act as circuit judge in the Ninth Circuit or Twelfth  
3 Circuit.”.

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

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

9 “(1) upon request by the chief judge of the  
10 Twelfth Circuit or Thirteenth Circuit, designate and  
11 assign 1 or more district judges within the Ninth  
12 Circuit to sit upon the Court of Appeals of the  
13 Twelfth Circuit or Thirteenth Circuit, or a division  
14 thereof, whenever the business of that court so re-  
15 quires; and

16 “(2) designate and assign temporarily any dis-  
17 trict judge within the Ninth Circuit to hold a district  
18 court in any district within the Twelfth Circuit or  
19 Thirteenth Circuit.

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

23 “(1) upon request by the chief judge of the  
24 Ninth Circuit or Thirteenth Circuit, designate and  
25 assign 1 or more district judges within the Twelfth



1 Circuit to sit upon the Court of Appeals of the  
2 Ninth Circuit or Thirteenth Circuit, or a division  
3 thereof whenever the business of that court so re-  
4 quires; and

5 “(2) designate and assign temporarily any dis-  
6 trict judge within the Twelfth Circuit to hold a dis-  
7 trict court in any district within the Ninth Circuit  
8 or Thirteenth Circuit.

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

12 “(1) upon request by the chief judge of the  
13 Ninth Circuit or Twelfth Circuit, designate and as-  
14 sign 1 or more district judges within the Thirteenth  
15 Circuit to sit upon the Court of Appeals of the  
16 Ninth Circuit or Twelfth Circuit, or a division there-  
17 of whenever the business of that court so requires;  
18 and

19 “(2) designate and assign temporarily any dis-  
20 trict judge within the Thirteenth Circuit to hold a  
21 district court in any district within the Ninth Circuit  
22 or Twelfth Circuit.

23 “(i) Any designations or assignments under sub-  
24 section (f), (g), or (h) shall be in conformity with the rules  
25 or orders of the court of appeals of, or the district within,



1 as applicable, the circuit to which the judge is designated  
2 or assigned.”.

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

6 “(i) Any 2 contiguous circuits among the Ninth Cir-  
7 cuit, Twelfth Circuit, and Thirteenth Circuit may jointly  
8 carry out such administrative functions and activities as  
9 the judicial councils of the 2 circuits determine may ben-  
10 efit from coordination or consolidation.”.

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

Page 8, line 8, strike the period at the end and in-  
sert “, 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 Cali-  
fornia.”.

Strike subsection (c) of section 3.

Insert after section 6 the following:



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

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

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

“First ..... 7”;

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

“Second ..... 15”;

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

“Sixth ..... 17”;

10 and

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

“Ninth ..... 19”.

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

“Twelfth ..... 8

“Thirteenth ..... 6”.

15 **SEC. 8. EFFECTIVE DATE.**

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

19 (b) SECTION 6.—Section 6 and the amendments  
20 made by section 6 shall take effect on the first October  
21 1 that occurs on or after 9 months after the date on which



1 all 5 judges authorized to be appointed to the ninth circuit  
2 court of appeals under section 5(a), and both judges au-  
3 thorized to be appointed under section 5(b), have been ap-  
4 pointed, by and with the advice and consent of the Senate.

