

GOP renews push to split 9th Circuit in half

By Erica Werner
ASSOCIATED PRESS

October 27, 2005

WASHINGTON – Republicans in Congress are renewing their push to break up the San Francisco-based 9th U.S. Circuit Court of Appeals, arguing that the nation's largest federal appeals court, the frequent source of rulings that infuriate conservatives, has become too big to be effective.

"I'm not aware in the Western world of a court this big," Sen. Jeff Sessions, R-Ala., said yesterday during a Senate Judiciary subcommittee hearing.

Opponents contend the circuit's size is not, in itself, a problem. They charged those seeking the change were motivated in part by politics.

"I think there are political reasons here. People say there aren't; I believe there are," said Sen. Dianne Feinstein, D-Calif.

The GOP-led House last year approved splitting the 9th circuit, but the measure didn't get a vote in the Senate, which is unlikely to approve such legislation this time around, either.

The 9th Circuit covers California and eight other states and has 28 judgeships. The circuit with the next-largest number of judges is the New Orleans-based 5th Circuit, with 17.

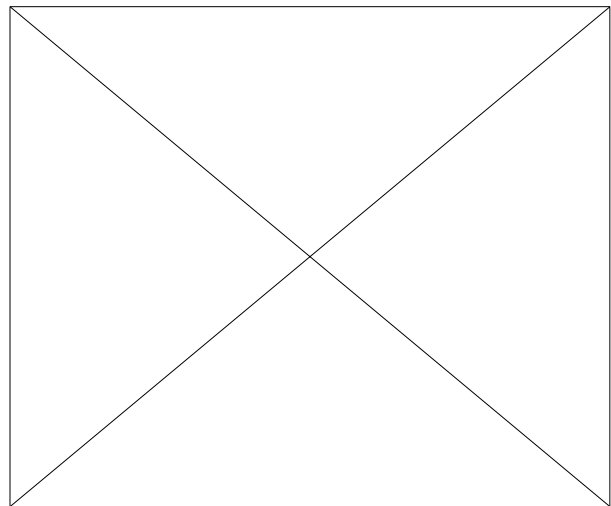
"Right now we have a caseload that is overwhelming, but with the population and the demographics in the area, we can only anticipate that it gets worse," said Sen. Lisa Murkowski, R-Alaska.

Murkowski and Rep. John Ensign, R-Nev., have sponsored legislation to split the 9th Circuit in two. The resulting 9th Circuit would cover California, Hawaii and the Pacific Islands, and a new 12th Circuit would cover Alaska, Washington, Oregon, Idaho, Montana, Nevada and Arizona.

Murkowski and Ensign said the new circuits would operate more efficiently and cases would be heard more quickly. Opponents were skeptical.

"It's an attempt to gerrymander the court to change the outcome of specific cases," said Glenn Sugameli, a legislative counsel at Earthjustice.

The 9th Circuit has issued a series of rulings that angered Republicans, including the 2002 opinion that declared the Pledge of Allegiance unconstitutional when recited in public schools, and the 2003 ruling that the federal law outlawing marijuana does not apply to patients whose doctors have recommended the drug.



The U.S. Supreme Court dismissed the pledge ruling and overturned the decision on medical marijuana, a frequent fate of rulings by the 9th Circuit.

The House Judiciary Committee will vote today on a bill by Rep. James Sensenbrenner, R-Wis., that would cut the circuit in two in the same way as the Senate legislation.

Feinstein contended the proposals would put California at a disadvantage by leaving the populous state with disproportionately few judges.

A half-dozen 9th Circuit judges testified yesterday, including three in favor of the split. Judges who were opposed said the three were the only judges on the circuit who favored the split.