

## **FEDERAL JUDICIARY: Ensign to introduce bill to divide 9th Circuit**

**By Alex Kaplun**

Sen. John Ensign (R-Nev.) plans later this week to float legislation that would break up the 9th U.S. Circuit Court of Appeals into three separate courts -- potentially setting up yet another heated Senate fight over the federal judiciary.

Under Ensign's bill, the 9th Circuit -- which currently oversees nine Western states -- would be changed to cover only California, Hawaii, Guam and the Mariana Islands. The legislation would then create two new courts: one for Alaska, Washington and Oregon, and another for Idaho, Montana, Arizona and Nevada.

Republicans have long argued the 9th Circuit is too large and places too much of a caseload burden on its judges. Democrats counter that any effort to split the court is designed to lessen the influence of California judges over the Western states and increase the number of federal courts with a conservative majority on the bench.

In recent years, the 9th Circuit has emerged as a target for conservative groups, which have attacked the court for its rulings in banning the Pledge of Allegiance in public schools and in several immigration cases. On the other side, environmentalists portray legislation to break up the court as an effort to place policies concerning federal lands and several other environmental regulations in the hands of more industry friendly judges.

"This effort is to get new circuits which have many more judges that are hostile to environmental safeguards," said Earthjustice attorney Glenn Sugameli. "The idea is that if you have a circuit that's composed of judges from Alaska, Washington and Idaho -- for example -- you would have a pool of judges that's much more inclined to rule for industry."

The House approved by a narrow margin a similar court-splitting measure during the last Congress, and Rep. Mike Simpson (R-Idaho) reintroduced the same bill earlier this year.

Western lawmakers attempted to attach the House measure to the fiscal year 2005 omnibus spending bill, but the provisions ended up on the cutting-room floor after Sen. Dianne Feinstein (D-Calif.) threatened to delay consideration of the spending bill. Feinstein also placed a hold during the last Congress on another House-approved judiciary bill that contained the same language.

Feinstein said in a statement this week that Congress needs to find a way to reduce California's caseload but argued the GOP-backed proposal would not achieve that goal and would cost as much as \$150 million.

"If there is a way to reduce the caseload of the 9th Circuit's judges in a fair and honest manner, I am open to considerations," Feinstein said. "For me to consider any solution to the high caseload of the 9th Circuit, it is essential that California be treated fairly."

In a letter to the Senate Judiciary Committee last year, 9th Circuit Chief Judge Mary Schroeder said a majority of her colleagues oppose any plan to divide the circuit. Of the 47 judges serving, 30 voted against dividing the circuit, while nine were in favor and eight abstained.

Still, Ensign spokesman Jack Finn said that despite the continued Democratic opposition, Republicans believe the bill could make it through the Senate this time around. "Obviously we think the chances are pretty good, otherwise we wouldn't be introducing it," Finn said.

It remains unclear, however, if lawmakers are willing to go through another fight that may replay the battle over the federal judiciary that consumed the Senate for about two months. "I wonder how much stomach the Senate has over another unnecessary fight over the courts when they almost destroyed the Senate over the nuclear option," Sugameli said.

Earthjustice and several other organizations have opposed previous measures to break up the 9th Circuit, and Sugameli said environmental groups will again oppose the measure if the Senate leadership makes a serious push for the bill.

Reprinted with permission from E&E Publishing. [www.eedaily.com](http://www.eedaily.com) 202.628.6500. Copyright 2005. All rights reserved.