

## COURTS: House votes to break up 9th Circuit; Senate not likely to act

By Dan Berman, *E&E Daily* reporter

The House voted to break up the 9th U.S. Circuit Court of Appeals into three parts yesterday, but it appears doubtful the Senate will follow suit.

By a 205-194 vote, the House adopted an [amendment](#) by Rep. Mike Simpson (R-Idaho) to [S. 878](#), a bill that would create nearly 60 new federal judgeships in circuits across the country. Under the amendment, California, Hawaii, Guam and the Northern Marianas Islands would remain in the 9th Circuit. Arizona, Idaho, Montana and Nevada would comprise the new 12th Circuit. The new 13th Circuit would include Alaska, Oregon and Washington.

Shortly thereafter, Sen. Dianne Feinstein (D-Calif.) said on the Senate floor she would place a hold on the bill in the Senate, which passed the original version of S. 878 in May.

Long a target for perceived liberal bias on environmental and social issues, the 9th Circuit is also the largest federal circuit, encompassing 11 Western states and territories. Because of its location and size, the 9th Circuit is often home to cases relating to environmental regulations and resources. The court has also been involved in controversial litigation outside of the environmental and energy sphere, including its 2002 ruling declaring illegal a portion of the Pledge of Allegiance.

Supporters of the Simpson amendment said the size of the court threatens its future ability to conduct business.

"I have long believed the people of Idaho and other Western states would be best served by breaking up the 9th Circuit into smaller, more efficient courts better designed to consistently and predictably serve our region" Simpson said.

The population of the area in the current 9th Circuit could grow to over 75 million people over the next 25 years, according to Simpson's office, which notes that the 8th and 10th circuits would only be serving areas with populations of 20 million people each.

Earthjustice attorney Glenn Sugameli said the amendment is an attempt by opponents of environmental laws and enforcement to seek out friendly judges and rulings.

"They don't like the decisions, so instead of changing the laws they're changing the judges," Sugameli said.

This would mark the second time a federal circuit was split -- the 5th Circuit was previously split into the 5th and 11th circuits -- but the size of the 9th Circuit and range of issues could cause a host of legal and logistical problems, Sugameli said. The split could potentially destroy the consistency and uniformity of court decisions governing federal lands and coastal issues such as offshore drilling and fisheries regulations. Two circuits would be involved in coastal issues and as many as four could be deciding public lands cases.

The bill "would drastically increase the need for the Supreme Court to straighten things out," and rule over conflicts between circuits, Sugameli said.

Reprinted with permission from E&E Publishing. [www.eedaily.com](http://www.eedaily.com) 202.628.6500.

Copyright 2004. All rights reserved.