

State of Arizona  
Senate  
Fifty-third Legislature  
First Regular Session  
2017

## **SENATE CONCURRENT MEMORIAL 1002**

A CONCURRENT MEMORIAL

URGING THE UNITED STATES CONGRESS TO DIVIDE THE NINTH CIRCUIT INTO TWO  
SEPARATE CIRCUITS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 To the Congress of the United States of America:

2 Your memorialist respectfully represents:

3 Whereas, the United States Court of Appeals for the Ninth Circuit  
4 (Ninth Circuit) encompasses the states of Alaska, Arizona, California,  
5 Hawaii, Idaho, Montana, Nevada, Oregon and Washington, as well as the  
6 Commonwealth of the Northern Mariana Islands and Guam; and

7 Whereas, the Ninth Circuit oversees the federal judiciary of nearly  
8 one-fifth of the population of the United States, adjudicates nearly 22%  
9 of all federal appellate cases and has nearly twice as many judges as the  
10 next largest circuit court; and

11 Whereas, the Ninth Circuit has the longest median  
12 filing-to-disposition period of any federal appellate court—15.4 months as  
13 of June 30, 2016, compared to a nationwide average of 8.8 months; and

14 Whereas, the unwieldy size of the Ninth Circuit requires that *en*  
15 *banc* decisions be heard in panels of 11 judges, less than half of the  
16 29-judge court, resulting in majority decisions of only six judges, less  
17 than one-fourth of the 29-judge court, that are cited to reflect the  
18 judgment of the circuit as a whole; and

19 Whereas, in order for a court to produce a coherent body of  
20 precedent, the judges on that court must each be familiar with all the  
21 opinions published by that court; and

22 Whereas, it is impossible for the individual Ninth Circuit judges to  
23 read the vast number of opinions produced by the court; and

24 Whereas, this inability to read the court's own precedent makes the  
25 production of consistent, coherent decisions impracticable and results in  
26 frequent errors by the court, as demonstrated by its extraordinarily high  
27 rate of reversal by the United States Supreme Court; and

28 Whereas, the United States Supreme Court reversed the Ninth Circuit  
29 in 79.5% of the Ninth Circuit decisions it reviewed in the four-year  
30 period ending in June 2014; and

31 Whereas, a three-judge panel consisting of a Ninth Circuit judge, a  
32 senior judge and a visiting judge from another circuit or a district court  
33 can bind 20% of the nation's population; and

34 Whereas, the court's amorphous structure and remote location make it  
35 difficult for the public, the bar and litigants to achieve a reasonable  
36 degree of familiarity with the judges who serve on it; and

37 Whereas, Article III of the United States Constitution provides that  
38 Congress may "ordain and establish" the federal courts, and Congress has,  
39 from time to time, established new circuit courts and judicial districts  
40 in response to the increased workload of existing federal courts; and

41 Whereas, in 2016, United States Senator Jeff Flake introduced  
42 S. 2490, the Judicial Administration and Improvement Act of 2016, which  
43 sought to divide the Ninth Circuit into two circuits, but the bill died in  
44 committee; and

1           Whereas, on January 4, 2017, United States Representative Andy Biggs  
2 introduced H.R. 250, which would divide the Ninth Circuit into two  
3 circuits.  
4 Wherefore your memorialist, the Senate of the State of Arizona, the House  
5 of Representatives concurring, prays:  
6           1. That the United States Congress divide the Ninth Circuit into  
7 two circuits by enacting H.R. 250 or other similar legislation.  
8           2. That the Secretary of State of the State of Arizona transmit a  
9 copy of this Memorial to the President of the United States Senate, the  
10 Speaker of the United States House of Representatives and each Member of  
11 Congress from the State of Arizona.