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Editorial

Bush nominates the right judge to the wrong seat

The Bush administration acknowledged the political landscape Tuesday when it abandoned four presidential nominations to federal court positions. The controversial nominees, including Idahoan William Myers, were doomed by the November election.

In a bizarre move, however, Bush turned around and doomed another Idaho candidate, 6th District Judge Randy Smith of Pocatello, by renominating him to a seat on the 9th Circuit Court of Appeals he cannot get. The 9th Circuit comprises Idaho and eight other western states.

Smith's nomination is the opposite of controversial. Members of both political parties recognize the former chairman of the state Republican Party as a good judge and a good guy. When legislators last year sent a memorial message to Congress supporting his confirmation, not one voted no.

So what's the problem? The seat to which Bush has nominated him was that of Stephen Trott. That seat historically has been filled by a Californian, which Trott was when he assumed it. He later moved his chambers to Boise.

California wants those chambers back, so much so that Sen. Dianne Feinstein, D-Calif., a member of the Senate Judiciary Committee, has blocked Smith's nomination for more than a year. The only thing Feinstein has against Smith is that he is from the wrong state. But that is enough for Judiciary Chairman Pat Leahy, D-Vt., who won't consider the nomination.

Leahy already has suggested the solution, however. If Bush were to nominate Smith for the seat formerly designated for Myers, one formerly filled by Idahoan Tom Nelson, his path to confirmation would be unobstructed.

Why Bush did not do that Tuesday is unfathomable, unless it was a clerical error. It is time for Idaho's two senators, both members of the president's party and both faithful supporters of him, to find out what went wrong. Let Larry Craig and Mike Crapo urge Bush to correct the error, and to nominate Smith to Nelson's former seat.

If that doesn't happen, the outcome is clear. As the San Francisco Chronicle reported Wednesday, Feinstein's position remains firm. "The White House today missed an opportunity to resolve an outstanding nominations issue," she said, adding that the president was needlessly "precipitating opposition."

Bush does not need this fight. The appeals court needs judges. And it's hard to imagine a better one from Idaho than Randy Smith. - J.F.