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Editorial: Idaho Gains Smith, but Loses Clout on Court

One of Idaho's best legal minds appears headed for the federal courts. Sixth District Judge Randy Smith of Pocatello was re-nominated to the 9th Circuit Court of Appeals last week by President Bush.

Smith's presence on the 9th Circuit will be a victory of sorts - and at the same time, a partial defeat.

Bush switched Smith's nomination to a different vacancy. Rather than being the replacement for Judge Stephen Trott, Smith will now replace Thomas G. Nelson.

William Myers III, the president's first nominee for the Nelson vacancy, went nowhere over three years in the U.S. Senate. He withdrew his name earlier this month.

Smith, who served as state GOP chairman before going to the bench, is a dyed-in-the-wool Idahoan with thick bipartisan support. But when Smith was nominated for Trott's vacancy in 2005, Sen. Dianne Feinstein, D-Calif., blocked the nomination, saying Trott was a California judge and his seat on the 9th was a California seat.

Trott countered that Feinstein was wrong on both counts. Trott was appointed by President Reagan while living in Virginia, then moved to Boise. Secondly, judgeship seats don't stay with states. Trott's seat has gone through four states since 1935.

But Senate leaders still didn't go to the mat for Smith and the president's nominees. "They never did schedule a vote, for whatever reason," said Dan Whiting, a spokesman for Idaho Sen. Larry Craig. "It was probably politics beyond Randy Smith."

Senate Judiciary Chairman Pat Leahy, D-Vt., recently told Craig and Bush that Smith would see swift confirmation if he were put into the Nelson vacancy.

"For now, he saw an opportunity to get Randy Smith confirmed in a promised expeditious manner," Whiting added.

Bush and the Idaho delegation are still of the mind that Trott's seat is an Idaho vacancy. But Senate leaders have given California all the spoils by ducking a fight. Now it appears the 9th Circuit judgeships will be determined largely by population.

As The Sacramento Bee thundered down on Idaho's Lilliputians in a recent editorial: "By far, the largest number of federal appeals cases comes from California (nearly 10,000 last year, 70 percent of the total), but only half of the judgeships are assigned to California) Only 167 cases were filed in Idaho last year, 1.2 percent of the 9th Circuit's cases. Only Alaska had fewer case filings. The one judgeship assigned to Idaho is more than enough to handle the caseload."

That argument isn't just flawed, it's also inconsistent. For starters, judges don't just decide cases from within their boundary. Second, if the 9th Circuit is to be based on California's population, why do its rulings alter the legal landscape far beyond its borders into eight other states? Feinstein and senators like her insist on judicial nominees who lean left on land resource laws, Endangered Species Act enforcement and water doctrine. The result is a legal imbalance felt across the West.

California's caseload also creates an enormous legal backlog, yet Feinstein and others refuse to split the circuit. Apparently, if you remove those states with the largest portions of public land (Alaska, Idaho, Nevada, Montana, Arizona), the influence of the 9th is substantially eroded.

Feinstein and her ilk can't have it both ways. If they want the Golden State's judicial influence to be vast and unchallenged, let them have a legal kingdom unto their own.

Our view: Idaho's switched judicial seat widened California's imprint on the 9th Circuit Court.

What do you think? We welcome viewpoints from our readers on this and other issues.