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Article

Renomination Prolongs Calif., Idaho Battle

By Lawrence Hurley

A recent Intrigue grew Tuesday over two vacant seats on the 9th U.S. Circuit Court of Appeals when one embattled nominee withdrew from contention and another was re-nominated by the White House.

Democrats were dismayed that the Bush administration did not use the opportunity provided by William G. Myers' withdrawal to resolve a turf dispute between senators from California and Idaho, who have competing claims on one of the seats.

California's senators, Democrats Dianne Feinstein and Barbara Boxer, had hoped that Bush would steer Idaho state judge N. Randy Smith, initially nominated last year, to the seat Myers had sought for more than three years until he withdrew abruptly Tuesday amid partisan opposition.

But that didn't happen.

Instead, the White House re-nominated Smith for a seat that Democrats contend belongs to a Californian. The seat previously held for Myers was left open.

Idaho's senators, Republicans Mike Crapo and Larry Craig, have supported Myers and Smith, arguing that their state should have two judgeships.

Bush's apparent decision not to settle for one Idaho judgeship frustrated Feinstein,

whose state has the largest number of judges on the 28-member court and contributes the lion's share of the 9th Circuit's caseload.

"The White House today missed an opportunity to resolve an outstanding nominations issue," Feinstein said in a statement. "I regret that President Bush did not nominate Randy Smith to the vacant Idaho seat ... thereby needlessly precipitating opposition."

She said she will maintain her position that one seat belongs to Idaho and one to California, a stand that has drawn the support of new Senate Judiciary Committee chairman Patrick J. Leahy, D-Vt., who initially aired the idea last year. Leahy spokesman Tracy Schmalzer confirmed Tuesday that Leahy still sides with Feinstein.

University of Pittsburgh law professor Arthur Hellman, a close watcher of the 9th Circuit and Congress, said a compromise is "a sensible thing for the administration to do at this point."

Curt Levey, executive director of the Committee for Justice, a group that supports President Bush's judicial nominees, speculated that the White House will take the path of least resistance.

"That may ultimately be what happens," he said in reference to Feinstein's plan.

Hellman noted that, as a senior Democrat on the Judiciary Committee, Feinstein is in a "strong position" to get what she wants. She can, for example, hold up committee votes on Smith, as she did last year after his initial nomination.

The disagreement over Smith, a former Idaho state Republican Party leader, has nothing to do with his credentials. Rather, it centers on the man he would replace for a full-time judgeship: Stephen Trott, who last year took senior status.

Although Trott has kept his chambers in Boise and counts himself an Idaho-based judge, Feinstein and others note that the former U.S. attorney for Los Angeles was considered a Californian when President Reagan nominated him to the 9th Circuit.

Myers initially was nominated in 2003 but never got close to confirmation, even when Republicans controlled the Senate. That was in large part because of concerns about his record on the environment as solicitor of the U.S. Department of the Interior during President Bush's first term.

Some of Myers' decisions, which tended to favor mining interests, were questioned by his superiors and overturned by federal courts.

"Myers was the worst on the environment," said Glenn Sugameli, senior legislative counsel for the environmental group Earthjustice. "This is obviously very good news."

Myers is one of four controversial nominees who have withdrawn since the November elections that brought Democrats to power. The others are 4th Circuit selections

William Haynes and Terrence Boyle and 5th Circuit nominee Michael Wallace.

In other action Tuesday, President Bush re-nominated five candidates for federal district court judgeships in California. They are Central District selections Valerie L. Baker, Philip S. Gutierrez, James E. Rogan and Otis D. Wright II and Eastern District nominee Lawrence J. O'Neill.