

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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Statement of Senator Patrick Leahy,
Ranking Member, Judiciary Committee
Hearing on Judicial Nominations
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Today the Committee will consider the nominations of Judge Norman Randy Smith for a lifetime appoint to the Court of Appeals for the Ninth Circuit.

I understand the concerns of Senators Feinstein and Boxer, as expressed in their January 30, 2006, letter to Chairman Specter, that the confirmation of Judge Smith to the Ninth Circuit would transfer a judgeship from California to Idaho, violating historical precedent. Judge Smith has been nominated to fill the seat last occupied by Judge Stephen Trott, an appointee of President Ronald Reagan from California, whose retirement in 2004 created this vacancy. Judge Trott was from California, where he had practiced for much of his career prior to becoming a judge. In fact, he was nominated to fill the seat of another Californian, Judge Joseph Sneed. At the time of his nomination, while he worked at the Department of Justice in Washington, the Senators from California were consulted and it was understood to be a California seat.

The practice in filling circuit vacancies has been to replace each with a nominee from the same State from which his or her predecessor was nominated. Sometimes an agreement can be worked out among Senators and the White House to proceed with someone from another State within the circuit first, so long as the subsequent nomination comes from the first State. I do not know of any precedent for a judge's personal decision to change his or her personal residence resulted in shifting a circuit seat. Of course the Bush-Cheney White House has attempted to steal a seat before, when it attempted to replace a Maryland Fourth Circuit judge with someone from Virginia. That attempt was unsuccessful.

Last year, there were nearly 10,000 federal appeals to the Ninth Circuit from California, constituting 70 percent of the Circuit's total appeals. California has only half of the Ninth Circuit's judgeships. In contrast, there were only 167 federal appeals filed in Idaho last year, constituting only 1.2 percent of the Ninth Circuit's appeals.

I am sensitive that every State within a circuit should have at least one judge come from that State. I supported legislation to ensure that and to afford Hawaii a seat on the Ninth Circuit. I will defend Idaho's right to a seat on the Ninth Circuit, just as I defend Vermont's right to a seat on the Second Circuit.

I urge President Bush to resolve this impasse by doing the right thing and nominating Judge Smith not for a California seat but for the vacancy created by the retirement of Judge Thomas G. Nelson from Idaho. In this way his nomination can be considered on the merits.