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Bork's Nomination Is Rejected, 58-42; Reagan 'Saddened'


By LINDA GREENHOUSE, Special to the New York Times
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WASHINGTON, Oct. 23 — One of the fiercest battles ever waged over a Supreme Court nominee ended today as the Senate decisively rejected the nomination of Judge Robert H. Bork.

The vote was 58 against confirmation and 42 in favor, the biggest margin by which the Senate has ever rejected a Supreme Court nomination. [Roll call, page 10.] Judge Bork's was the 27th Supreme Court nomination to fail in the country's history, the sixth in this century, and the first since 1970, when the Senate rejected President Nixon's nomination of G. Harrold Carswell by a vote of 51 to 45. There have been 104 Supreme Court justices in the nation's history.

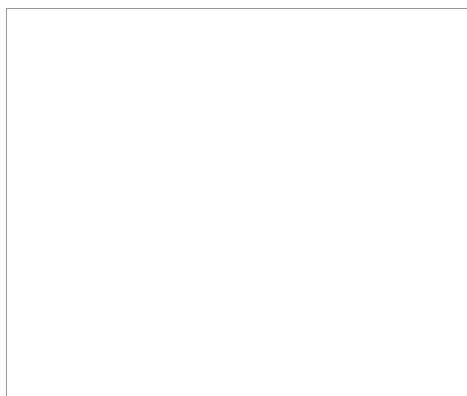
Bork 'Glad Debate Took Place'

The vote came two weeks after Judge Bork, in the face of expected defeat, said he would not withdraw his name and wanted the full Senate to vote on his nomination. In a statement issued from his chambers at the Federal courthouse here, where he still serves on the United States Court of Appeals for the District of Columbia Circuit, Judge Bork said he was "glad the debate took place."

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"There is now a full and permanent record by which the future may judge not only me but the proper nature of a confirmation proceeding," the 60-year-old judge said.

President Reagan, in a statement released by the White House, said, "I am saddened and disappointed that the Senate has bowed today to a campaign of political pressure." The Next Nominee? In the final hours of the three-day debate on the Senate floor, senators turned their attention to the next nominee for the vacancy on the court. The White House is not expected to name a new candidate before the middle of next week.

The President has publicly vowed to find a nominee who will upset Judge Bork's opponents "just as much" as Judge Bork himself. Mr. Reagan said today, "My next nominee for the Court will share Judge Bork's belief in judicial restraint - that a judge is bound by the Constitution to interpret laws, not make them."

Meanwhile, senators on both sides of the debate urged the President to adopt a less confrontational tone.

"I would recommend they not send someone as controversial," Senator Strom Thurmond of South Carolina, the ranking Republican on the Judiciary Committee, said at a news conference after the vote. In his closing remarks on the Senate floor, Senator Thurmond called Judge Bork "a great judge who would have adorned the Supreme Court with honor."

At his news conference, Senator Thurmond added that "as a matter of fairness," the next nominee should be from the South. Justice Lewis F. Powell Jr., whose retirement last June created the vacancy, is from Virginia, and there is now no Southerner on the Court.

Democrats were more pointed in their warnings to the White House.

"If we receive a nominee who thinks like Judge Bork, who acts like Judge Bork, who opposes civil rights and civil liberties like Judge Bork, he will be rejected like Judge Bork, just like that," Senator Edward M. Kennedy of Massachusetts said on the Senate floor.

A Dozen Names Mentioned

Reagan Administration officials have been closed-mouthed about who the next nominee might be. More than a dozen names have been mentioned by officials and others as possibilities, perhaps most prominently six conservative Federal appellate judges.

They are Laurence H. Silberman, 52, of Washington, a former Deputy Attorney General and Ambassador to Yugoslavia; Anthony M. Kennedy, 51, of Sacramento, a favorite of some Justice Department officials; J. Clifford Wallace, 58, of San Diego, who is said to be close to Attorney General Edwin Meese 3d but who has already attracted some opposition from liberals who say he opposes strict separation of church and state; Pasco M. Bowman 2d, 53, of Kansas City, Mo., a former law school dean; Ralph K. Winter Jr., 52, of New Haven, a friend and former Yale Law School colleague of Judge Bork, and Patrick E. Higginbotham, 48, of Dallas, who is highly regarded by some officials but has been criticized both by opponents and by supporters of abortion rights for his complex ruling in one case.

The Senate Democratic leader, Robert C. Byrd of West Virginia, urged the Administration to consult with the Senate before submitting a new name. Democratic leaders had warned the White House in June that Judge Bork's nomination would engender deep opposition. A Hint of Consultations

Senator Joseph R. Biden Jr. of Delaware, the chairman of the Judiciary Committee, said after the vote that Howard H. Baker Jr., the White House chief of staff, had told him today that no choice had yet been made but that Administration officials would discuss the matter with Democratic leaders next week.

But Senator Biden said he was not certain that the White House was committed to advance consultations. "It may very well be that he will just come up here with a name," Senator Biden said of Mr. Baker.

Six Republicans joined 52 Democrats in voting against Judge Bork, while 2 Democrats, David L. Boren of Oklahoma and Ernest F. Hollings of South Carolina, joined the 40 Republicans who voted in his favor.

By the time the Senate convened this morning, only three senators had not announced their positions: John W. Warner, a Virginia Republican, and two Democrats, William Proxmire of Wisconsin and John C. Stennis of Mississippi. All three voted against Judge Bork.

The Agony of a Loyalist

The biggest surprise was Senator Warner, who had been openly agonizing for weeks over the decision. The ranking Republican on the Armed Services Committee, Senator Warner is almost unfailingly loyal to the Administration. But in a brief speech on the Senate floor, he said that Mr. Reagan's recent statement that the opposition to Judge Bork was a "lynch mob" was "unbecoming the office of the Presidency."

Senator Warner, who once served as a law clerk for a former chief judge on the court where Mr. Bork now sits, said that he wanted to support the nominee. However, he said: "I searched the record. I looked at this distinguished jurist, and I cannot find in him the record of compassion, of sensitivity and understanding of the pleas of the people to enable him to sit on the highest Court of the land."

Although the outcome of the vote today was decided more than two weeks ago when the number of senators on record as opposing confirmation reached a majority, a sense of drama nonetheless arose in the Senate chamber when the moment came, shortly after 2 P.M.

The galleries were filled, both with members of the general public and with leaders of organizations that had played leading roles in lobbying for and against confirmation.

In an ordinary roll-call vote, senators wander through the chamber, chatting with colleagues and voting by a casual hand signal. But for this vote, Senator Byrd asked senators to remain at their seats and vote. As the clerk called each name, senators stood up, intoning "aye" or "no" in solemn voices.

Family in the Visitors' Gallery

But earlier in the day, the scene was less dramatic than poignant. Then, the chamber was nearly deserted save for a few senators making their final speeches and Judge Bork's wife, Mary Ellen, and two sons, who sat expressionless in the visitors' gallery. They left before the vote began. Mrs. Bork and the judge's children, Charles, Ellen and Robert Jr., had sat with him in his five days of testimony last month before the Judiciary Committee. In his statement today, Judge Bork said that his family's "love and counsel sustained me throughout the extended process we have been through together."

Senator John C. Danforth, a Missouri Republican who was a student of Judge Bork's at Yale Law School, gave a long speech on his behalf this morning, contending that opponents had distorted the nominee's record and defeated him by making the public afraid of him.

The normally soft-spoken Senator continued, his voice rising: "What has happened to Robert Bork is wrong. The man's been trashed in our house. Some of us helped generate the trashing, others yielded to it, but all of us are accomplices."

Senator Biden replied that Senator Danforth was making "one heck of an indictment of your colleagues" by suggesting that senators had not reached independent decisions on Judge Bork but had "succumbed to raw pressure."

Senator Biden continued: "I have a higher opinion of the ability of my colleagues to do what's right."

'A Great Debate'

Later, in closing the debate, the Judiciary Committee chairman said: "This has been a great debate, a debate about fundamental principle, about how one interprets the Constitution."

Senator Biden repeated the statement with which he opened Judge Bork's confirmation hearings last month, and which he has made a theme for the entire proceeding. "I believe I have rights because I exist, in spite of my government, not because of my government," he said. "Judge Bork believes that rights flow from the majority, through the Constitution to individuals, a notion I reject."

After the vote, Senator Biden said that although "I enjoy winning," this particular victory was "less enjoyable than others, because we are talking about a man who had to sit home and listen to this, a fine man who just had a view of the Constitution that is out of touch with the 1980's and 1990's."

The debate thus ended with Judge Bork's supporters and opponents holding fundamentally

irreconcilable views of what had gone wrong for the nominee. His supporters insisted that he had been misunderstood and mischaracterized, while his opponents maintained that he lost precisely because the senators and their constituents did understand his views, and rejected them.



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