VOICE OF REASON

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Bork Supreme Court Confirmation Rated Tossup

Senate confirmation of Robert Bork's nomination to the Supreme Court is rated a tossup as we go to press on the eve of the Senate Judiciary Committee's hearings on Bork's fitness. Of 142 nomintions to the Supreme Court since George Washington's first administration, 34 (24%) have been rejected or withdrawn, about a third of them for ideological reasons. While the president may nominate anyone to serve on the Supreme Court, all appointments must be either approved or rejected by the Senate.

Bork's nomination has been endorsed by Jerry Falwell and many ultraconservative groups and publications, such as William Buckley's *National Review* and *Human Events*. The public affairs committee of the Southern Baptist Convention endorsed Bork in August.

Among the many organizations opposing the Bork nomination are Americans for Religious Liberty, American Civil Liberties Union, Board of Homeland Ministries of the United Church of Christ, American Jewish Congress, B'nai B'rith Women, Catholics for a Free Choice, Episcopal Women's Caucus, National Council of Jewish Women, United Methodist Women, Union of American Hebrew Congregations, AFL-CIO, American Association of University Women, American Federation of State, County, and Municipal Employees, American Federation of Teachers, Common Cause, United Auto Workers, Leadership Conference on Civil Rights, Mexican American Legal Defense and Education Fund, the NAACP, the National Abortion Rights Action League, National Association of Social Workers, National Council of Senior Citizens, National Education Association, National Organization for Women, Organization of Chinese Americans, People for the American Way, Planned Parenthood Federation of America, Public Citizen.

Although the Reagan administration is trying to portray Bork, currently a judge of the U.S. Court of Appeals in the District of Columbia, as a "moderate," Bork's long trail of speeches, writings, and court rulings make clear that he is a rigid ideologue with a "moral majority" mentality and far to the extreme right of the Supreme Court moderate, Lewis Powell, whose vacancy he hopes to fill. His confirmation would throw the Supreme Court off balance until the next century. At present the Court is evenly divided between justices friendly to the Bill of Rights (Brennan, Marshall, Stevens, Blackmun) and those who are in varying degrees unfriendly to it (Rehnquist, White, O'Connor, Scalia).

In a series of speeches in 1984 and 1985 Bork insisted that "the major freedom of our kind of society is the freedom [of majorities or pluralities] to have a public morality." By this Bork means the "freedom" of a legislature to impose majority moral or religious views on everyone, as in the case of birth control or abortion. Bork declared at Canisius College in October 1985 that, "The Bill of Rights is itself a way of privatizing some aspects of

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Public Schools Win Textbook Rulings

Religious radical right attacks on public schools were rebuffed in major rulings by federal appeals courts in Cincinnati and Atlanta on August 24 and 26.

The Sixth Circuit U.S. Court of Appeals in Cincinnati overturned a lower federal court ruling in *Mozert v. Hawkins County Board of Education,* which had ruled that several fundamentalist families could opt their children out of elementary English classes in Church Hill, Tennessee, which offended the parents' religious views. The Sixth Circuit also overturned the lower court's award of $51,000 to the fundamentalist plaintiffs to reimburse them for private school tuition and other expenses.

In Atlanta the Eleventh Circuit U.S. Court of Appeals overturned Mobile, Alabama, federal judge Brevard Hand's ruling in *Smith v. Board of School Commissioners of Mobile County.* Hand had ruled that 44 elementary social studies and secondary U.S. history and home economics textbooks teach "the religion of secular humanism" and thus violate the First Amendment's no establishment clause.

Americans for Religious Liberty had joined *amicus curiae* briefs in both cases.

A curious irony in the two cases is that the Tennessee fundamentalist plaintiffs complained that textbooks said too much about religion, while the Alabama plaintiffs said there was too little religion. Another difference between the two cases was that district court judge Thomas Hull in Tennessee found no fault with the textbooks but allowed the offended parents to opt their children out of classes using the books in question, while in Alabama district court judge Brevard Hand ruled the textbooks to be unconstitutional. Hand had held that the relative scarcity of material about religion was equivalent to teaching "secular humanism." Hand had even held that the presence of "foul language" in a textbook story was arguably the "advancement of humanism, secularism, or agnosticism."

In ruling against the Tennessee plaintiffs, the appeals court in Cincinnati noted that, "the plaintiffs' own testimony casts serious doubt on their claim that a more balanced presentation [about religion] would satisfy their religious views," and added, "The

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