October 23, 1987

CONGRESSIONAL RECORD—SENATE

29121

These are grand terms—terms that to this day both stir and confound us. But let me quote from one of the most distinguished witnesses to appear before the committee: Shirley Hufstedler, a former Court of Appeals Judge and the Secretary of Education under President Jimmy Carter. This is what Judge Hufstedler had to say about these terms:

They are words of passion. They are words of dedication. They are words that cannot be drained of their emotional content. * * * None can be cabined without destroying the Constitution and its capacity to encompass changes in time, place and circumstance.

From these “words of passion” comes a tradition of Supreme Court jurisprudence that has recognized fundamental principles of liberty. I have touched upon these principles before. They have been expressed in different ways, but we understand the message they convey:

The right to be let alone.

Ordered liberty.

Postulates of respect for the liberty of the individual.

Values deeply rooted in this Nation’s tradition.

These are the great documents of history. Cut them, and they will bleed with the blood of those who fashioned them and those who have nurtured them through the succeeding generations.

Can the Senate take the risk of confirming to the Supreme Court someone who does not recognize certain fundamental rights that are imbedded in the fiber of our Constitution—that are imbedded in the fiber of our Nation?

I think the answer—after detailed and extensive hearings, after a serious debate on the floor of the U.S. Senate—is clear.

The Nation cannot take that risk.

I urge the rejection of Judge Robert H. Bork to be an Associate Justice of the U.S. Supreme Court.

CONCLUSION

Finally, let me add a personal note.

There has been much talk about a smear campaign, about a personal attack on Judge Bork, about the damage that has been done to his honor and his integrity, and even about how people may be gloating or joyfully congratulating themselves about Judge Bork’s defeat.

This Senator will have none of this. Throughout these proceedings, I have respected Judge Bork’s honor and I have believed in his integrity. I continue to do so.

There can be no joy for this Senator in defeating a person of Judge Bork’s personal caliber. Although we try not to take defeats of this kind personally—and the people in this body know the anguish of defeat well—judicial nomination battles always involve just one person at a time, and they can become intensely personal to the nominee. I find no joy in this situation.

I do have a solemn responsibility as a U.S. Senator, and I have attempted to discharge it. I could not shrink from the conflict in deep constitutional principle that I have with Judge Bork. But let me make this clear: I do not consider what has happened here to count against Judge Bork’s honor and integrity, and I hope no one in the country does. Still, it is with a heavy heart for the man and his family that I urge my colleagues to vote against Robert Bork, for I suspect this is a post he wanted very much, and I fear others might misunderstand the kind of judgment that this body is making.

For Judge Bork and his family, I ask that no one make that mistake.

And to Judge Bork and his family, I can only wish them well.

Mr. President, I can see you are about to lift your gavel and I am probably within the patience of my colleagues, but I congratulate all those who have chosen to engage in the debate on principle and hope and pray the President of the United States sends us a woman or a man next upon the President of the United States.

The PRESIDING OFFICER. The Senator from South Carolina has approximately 45 minutes. Does he yield back his time?

Mr. THURMOND. I yield back the remainder of my time.

The PRESSING OFFICER. The Senators yield back the time. All time is gone.

The question is, Will the Senate advise and consent to the nomination of Robert H. Bork, of the District of Columbia, to be an Associate Member of the Supreme Court.

Mr. WALLOP. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask that order be maintained in the Senate, that Senators remain at their seats and that the clerk repeat the responses after each response.

The PRESIDING OFFICER. Regular order will be followed.

The clerk will continue calling the roll.

The assistant legislative clerk resumed and concluded the call of the roll.

The result was announced—yeas 42, nays 58, as follows:

[Rollcall Vote No. 348 Ex.]

YEAS—42

Armstrong Armstrong
Bond Bond
Boren Boren
Boumediene Boumediene
Cooper Cooper
Cohen Cohen
D'Amato D'Amato
Danforth Danforth
Dele Dele
Dennison Dennison
Durenberger Durenberger
Evans Evans
Greene Greene
Gramm Gramm

NAYS—58

Adams Adams
Baucus Baucus
Bentsen Bentsen
Bingaman Bingaman
Bradley Bradley
Bumpers Bumpers
Burke Burke
Byrd Byrd
Chafee Chafee
Chiles Chiles
Collins Collins
Granston Granston
Daschle Daschle
Concini Concini
Dixon Dixon
Dodd Dodd
Exon Exon
Ford Ford

The PRESIDING OFFICER. On Rollcall No. 348, the nomination of Robert H. Bork, the yeas are 42, the
The Senate proceeded to consider the bill, which had been reported from the Committee on Appropriations, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italics.)

H.R. 2906

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 1988, and for other purposes, namely:

**MILITARY CONSTRUCTION, ARMY**

For acquisition, construction, installation, and equipment of temporary or permanent public works, military installations, facilities, and real property for the Army as currently authorized by law, and for the purposes of this appropriation, $55,000,000 is hereby rescinded: Provided further, That none of the funds appropriated for planning, design, or construction of military facilities or family housing may be used to support the relocation of the 48th Fighter Wing from Spain to another country.

**MILITARY CONSTRUCTION, AIR FORCE**

For acquisition, construction, installation, and equipment of temporary or permanent public works, installations, facilities, and real property for the Air Force as currently authorized by law, $5,300,000 is hereby rescinded.

**MILITARY CONSTRUCTION, DEFENSE AGENCIES**

For acquisition, construction, installation, and equipment of temporary or permanent public works, installations, facilities, and real property for the Navy as currently authorized by law, including personnel in the Naval Facilities Engineering Command and other personal services necessary for the purposes of this appropriation, $5,115,000,000 is hereby rescinded: Provided, That of this amount, not to exceed $133,120,000 shall be available for study, planning, design, architect and engineer services, as authorized by law, unless the Secretary of Defense determines that additional obligations are necessary for such purposes and notifies the Committees on Appropriations of both Houses of Congress of his determination and the reasons therefor: Provided further, That of the funds appropriated for “Military Construction, Navy” under Public Law 98-473, $4,600,000 is hereby rescinded: Provided further, That of the funds appropriated for “Military Construction, Defense Agencies” under Public Law 99-173, $8,000,000 is hereby rescinded: Provided further, That, of the funds appropriated in this Act for NATO infrastructure, no more than 35 percent may be utilized to support non-construction activities.

**MILITARY CONSTRUCTION, ARMY NATIONAL GUARD**

For construction, acquisition, expansion, rehabilitation, and conversion of facilities for the training and administration of the Army National Guard, and contributions therefor, as authorized by chapter 133 of title 10, United States Code, and military construction authorization Acts, $19,004,000 is hereby rescinded.

**MILITARY CONSTRUCTION, AIR NATIONAL GUARD**

For construction, acquisition, expansion, rehabilitation, and conversion of facilities for the training and administration of the Air National Guard, and contributions therefor, as authorized by chapter 133 of title 10, United States Code, and military construction authorization Acts, $120,475,000 is hereby rescinded.