

With only one dissenting vote, the Senate has confirmed the nomination of Lewis Powell to the Supreme Court. In this decisive manner, the Senate has shown how false was the imputation that it would not approve a Southerner or a conservative. When a nominee is a man of professional stature, wide experience, and a fundamental belief in the basic guarantees of the Constitution, no regional bias or philosophical disagreement bars his way.

It is a source of profound regret that President Nixon's other nominee for the Court is not of the same quality. Instead, by submitting the name of William Rehnquist, the President has once again provoked the turmoil of a confirmation struggle.

The grounds for rejecting Mr. Rehnquist are quite different from those on which the Senate refused to confirm two earlier Nixon nominees. His record does not show either insensitivity to potential conflicts of interest or deficient professional qualifications. Rather, his are the defects of basic insensitivity to racial equality and seriously deficient understanding of the Bill of Rights.

He has repeatedly shown himself opposed to judicial or legislative efforts to eliminate racial discrimination. There was a time decades ago when a nominee with Mr. Rehnquist's opinions would have been confirmed for the Court with hardly a ripple of controversy. But twenty-five years of Supreme Court rulings, Congressional legislation and social upheaval have made him an anachronism. Commitment to equality of treatment and opportunity for all races has become one of the indisputable standards of modern constitutional democracy. Since Mr. Rehnquist is lacking in such a commitment, the Senate if it confirmed him would be voting to turn back the clock.

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Mr. Rehnquist's evident lack of sympathy for individual liberties also disqualifies him. The Constitution is a libertarian document. The first ten amendments and many other provisions are prohibitions against the exercise of certain kinds of power by the Federal Government and against the arbitrary, excessive, or unreviewed exercise of other powers.

As a political activist and as an Assistant Attorney General, Mr. Rehnquist has relentlessly argued in favor of abridging and diminishing the liberties of the citizen and enhancing the powers of Government—to tap the citizen's phone and "bug" his home and office, to enter his premises without knocking, to use tainted evidence against him, to arrest him in dragnet sweeps, to compel him to testify against himself, to deprive him of his right to practice his profession if he is a radical lawyer.

It is easy and comfortable for the ordinary, law-abiding citizen to assume that these intrusions of governmental authority will never touch his life, but the whole history of human liberty shows that the unpopular dissenter is the first—but rarely the only—victim of arbitrary power.

In voting for the first time in fifty years to oppose a nominee for public office, the national board of directors of the American Civil Liberties Union stated: "We know Mr. Rehnquist as a person committed to the notion that in every clash between civil liberty and state power, it is civil liberty that should be sacrificed."

Free societies are judged by how they treat their racial minorities and by the extent of the liberty they allow the individual citizen. On both counts, Mr. Rehnquist fails to qualify as one of the guardians of a Constitution of free men.