

LBL WITHDRAWS NOMINATION -- FORTAS REQUEST

By JOHN CHADWICK

WASHINGTON (AP)—

President Johnson today received and accepted "with deep regret" a request by Abe Fortas that his nomination as chief

justice of the United States be withdrawn.

"With deep regret I have accepted and concur in the request of Mr. Justice Fortas and am withdrawing his nomination as chief justice of the

United States," a brief presidential statement said.

"I believed when I made this nomination, and I believe now, that he is the best qualified man for this high position," Johnson said.

SPEAKING OF the Senate's

refusal to halt a filibuster against Fortas' nomination, Johnson said: "The action of the Senate, a body I revere and to which I devoted a dozen years of my life, is historically and constitutionally tragic."

Today's action climaxed the long and sometimes bitter fight which began with Johnson's nomination of Fortas June 26.

Senate supporters of Johnson's nominee to head the nation's highest court failed

yesterday by 14 votes in an effort to shut off long-continuing debate.

THIS MORNING Fortas sent a letter to the White House asking the President to withdraw his nomination.

A continued effort to seek

Senate approval of his nomination, Fortas said in the letter, would result in continuation of attacks which would be "especially inappropriate and harmful to the court and the nation if they should con-

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taken since he's been on the Supreme Court."

SEN. ROBERT P. Griffin, R-Mich., leader of the anti-Fortas Republicans, said he thought Fortas made a wise decision.

"The chief justice of the United States should have widespread support among the people and in the Senate. In view of the deep division and controversy surrounding the nomination, it was a wise decision," Griffin told a reporter.

Griffin also said he did not think President Johnson should send up another nomination, since "we are on the eve of a decision by the people concerning a new government."

THIS WAS A reference to the presidential election Nov. 5. Critics of Johnson would prefer that the next chief justice be chosen by the new president.

Senate Republican Leader Everett M. Dirksen of Illinois, whose shift away from his originally strong support for Fortas was considered a major blow to the nomination, commented that the justice "obviously must have come to the conclusion it (withdrawal) was the prudent thing to do."

Sen. Philip A. Hart, D-Mich., who was floor manager for the move to win confirmation, said: "I regret it. I said all along he would have been a most distinguished chief justice. Of course, I respect his judgment."

Senate Democratic Leader Mike Mansfield of Montana said he was taken by surprise by the Fortas move and "it would be improper for me to comment at this time."

Sen. Howard H. Baker Jr., R-Tenn., an opponent of the nomination, said the request for withdrawal "reflects well on Justice Fortas."

Asked whether he thought Johnson would send up a new nomination, Baker replied: "I vtry much hope he doesn't."

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tinue while the court is in session."

The withdrawal of the nomination means that the current chief justice, Earl Warren, will still be in that post when the high tribunal opens its next session Monday, and for an indefinite time thereafter.

WARREN, 77, had asked to retire at the pleasure of the President, and Johnson agreed to the retirement, effective upon qualification of a successor.

Presidential Press Secretary George Christian left open just what Johnson might do next.

"I think the matter of Justice Fortas' withdrawal will be discussed with the attorney general and I cannot anticipate what might develop," Christian said.

The White House spokesman declined also to discuss what alternatives might be open to the President at this point.

THE FORTAS LETTER was made public at the Supreme Court at around the time it was being delivered to the White House. Johnson was involved shortly afterward in a brief ceremony on the White House lawn, welcoming the visiting president of Chad.

Soon afterwards, Christian called in newsmen to issue the presidential statement.

In that statement, Johnson said: "I urge all involved with and concerned about our Constitution and its form of government to pledge now that this shall be no precedent, and that the Senate hereafter will act by majority will and never fail to address itself to the issues which it has the constitutional duty to answer."

The 58-year-old justice, appointed to the Supreme Court by Johnson in 1965, started off his letter by saying he had noted the failure of the motion to end the filibuster in the Senate.

HE COUPLED this with the observation that the new term of the court will begin on Monday and that "I will, of course, be participating in its work as associate justice."

"In view of these circumstances," Fortas wrote, "I ask you to withdraw my nomination as chief justice."

"Continued efforts to secure confirmation of that nomination, even if ultimately successful, would result in a continuation of the attacks upon the court which have characterized the filibuster—attacks which have been sometimes extreme and entirely unrelated to responsible criticism."

"Attacks of this sort would be specially inappropriate and harmful to the court and the nation if they should continue while the court is in session, engaged in the adjudication of issues of great importance to the nation as well as the litigants."

Fortas, whom Johnson had nominated June 26 to succeed Chief Justice Earl Warren, told the President in his letter he did not want to provide the occasion for a situation marked by continuation of attacks on the court.

"MY ACTION in submitting this request for withdrawal should avert the danger that it will occur," Fortas said, "and I hope that my withdrawal will help to put in motion a process by which there will be an end to destructive and extreme assaults upon the court."

Fortas said he appreciated the confidence Johnson had shown in his qualifications by nominating him for the nation's highest judicial office.

"He said he also wished to thank colleagues at the bar and in the law schools for their support and also members of the Senate who had supported him.

"I PRAY THAT we shall see, in all of our nation, renewed dedication to the principles of fairness and justice and moderation, without which our democracy cannot continue," Fortas said.

He added that it was in this spirit that he respectfully requested Johnson to honor his request for withdrawal of the nomination.

The Supreme Court clerk said that Fortas had written the letter yesterday, that it was typed this morning and that it was delivered by a secretary to the White House.

Newsmen were told that Fortas would have no further statement to make and that he was not available because he was observing Yom Kippur the Jewish holiday.

FORTAS' LETTER, in which he said he intends to continue as an associate justice, appeared to wash out Johnson's nomination of U.S. Circuit Court Judge Homer Thornberry of Texas to be a member of the Supreme Court.

In submitting Fortas' name to the Senate, Johnson also nominated Thornberry to take Fortas' place as an associate justice.

Sen. Strom Thurmond, R-S. C., one of the leading opponents of the Fortas nomination, was quick to comment on Fortas' letter to Johnson. He said: "This is the wisest action Fortas has

Texts of Fortas Letter and the President's Statement

Special to The New York Times

WASHINGTON, Oct. 2 — Following are the texts of a letter from Associate Justice Abe Fortas to President Johnson asking that his nomination as Chief Justice of the United States be withdrawn and of a statement by Mr. Johnson accepting the request:

Fortas Letter

My Dear Mr. President:

I note the failure of the motion to end the filibuster in the Senate with respect to my nomination as Chief Justice of the United States. The 1968 term of this Court begins, according to law, on Monday, Oct. 7. I will, of course, be participating in its work as Associate Justice.

In view of these circumstances, I ask you to withdraw my nomination as Chief Justice. Continued efforts to secure confirmation of that nomination, even if ultimately successful, would result in a continuation of the attacks upon the Court which have characterized the filibuster—attacks which have been sometimes extreme and en-

tirely unrelated to responsible criticism.

Attacks of this sort would be especially inappropriate and harmful to the Court and the nation if they should continue while the Court is in session, engaged in the adjudication of issues of great importance to the nation as well as the litigants.

I do not want to provide the occasion for a situation of this sort. My action in submitting this request for withdrawal should avert the danger that it will occur; and I hope that my withdrawal will help put in motion a process by which there will be an end to destructive and extreme assaults upon the Court.

I appreciate the confidence in my qualifications which led you to nominate me as Chief Justice. I wish particularly to thank my colleagues at the bar and in the law schools for their support, and to express my appreciation to those members of the United States Senate who have supported me.

I pray that we shall see, in all of our nation, renewed dedication to the principles of fairness and justice and moderation, without which

our democracy cannot continue.

It is in this spirit that I respectfully ask that you honor my request for withdrawal of my nomination as Chief Justice of the United States.

Sincerely,

ABE FORTAS

Johnson Statement

With deep regret I have accepted and concur in the request of Mr. Justice Fortas and am withdrawing his nomination as Chief Justice of the United States. I believed when I made this nomination, and I believe now, that he is the best qualified man for this high position. The action of the Senate, a body I revere and to which I devoted a dozen years of my life, is historically and constitutionally tragic.

I urge all involved with and concerned about our Constitution and its form of Government to pledge now that this shall be no precedent, that the Senate hereafter will act by majority will and never fail to address itself to the issues which it has the constitutional duty to answer.