

McGovern, in Clarification, Asks That Nixon Not Nominate Byrd

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By FRED P. GRAHAM OCT 12 1971

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WASHINGTON, Oct. 11— Senator George McGovern backed quickly away today from his warm words about Senator Robert C. Byrd's suitability for the Supreme Court. He called upon President Nixon not to nominate Senator Byrd. "His nomination would be highly divisive, not only in the Senate but in the country at large," Senator McGovern said in a "clarification" of remarks he made yesterday on a television interview show.

The South Dakota Democrat, who has relied heavily upon liberal support in his announced candidacy for the Democratic Presidential nomination, said in a statement today that Senator Byrd, a former member of the Ku Klux Klan, "has a heavy burden to overcome."

Senator Byrd, who is the Democratic whip in the Senate, picked up the endorsement of another Democratic Presidential hopeful today. Senator Henry M. Jackson of Washington was quoted by United Press International as having said in Tampa, Fla., that he would vote for Senator Byrd's confirmation if he was nominated. He said he thought Senator Byrd could win confirmation.

There were indications from the White House that the Nixon Administration wished to dampen the speculation that Senator Byrd might be in line for nomination to one of the two vacant seats. White House sources continued to insist that Mr. Byrd is not the Presi-

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M'GOVERN WARNS ON CHOICE OF BYRD

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dent's first choice, adding that he is only under consideration with several others and that the speculation about him outstripped reality.

In his statement today Senator McGovern said he would not decide whether or not to vote for confirmation of Senator Byrd, if Mr. Byrd is nominated, until after hearings were held by the Senate Judiciary Committee.

Yesterday on the American Broadcasting Company's "Issues and Answers" show, Senator McGovern called Senator Byrd, a West Virginia Democrat, "a man of enormous industry and personal pride" who would "bend every effort to become a great judge" if

placed on the Supreme Court.

Senator McGovern added that if President Nixon were to nominate Senator Byrd, the Senate would probably confirm him. He said yesterday that if he were President he would not pick Senator Byrd or any other man, because he favors appointment of a woman.

Senator Byrd's name came to the forefront of the speculation last weekend after it became known that he was discussed during a meeting Friday between officials of the Justice department, Congressional Republican leaders and White House advisers.

According to reports of the meeting, other possibilities were also discussed, including two republican

Senators, Robert P. Griffin of Michigan and Howard H. Baker Jr. of Tennessee.

However, the latter two appear to be ineligible for nomination, because both were elected in 1966 and Congress

raised the pay of Supreme Court Justices in 1969. Article 1, Section 6 of the Constitution says that no Senator or Representative may be appointed to any Federal office, including the bench, for which the "emoluments" have been increased "during the time for which he was elected."

Senator Byrd would not be barred by this provision because he is serving a term for which he was elected in 1970.

Criticism of Senator Byrd continued to focus upon his anti-civil rights record and his slender legal qualifications.

Senator Byrd has conceded that he was a Klan member but has said that he quit in 1943. Today copies of a letter that Senator Byrd wrote in 1946 to Sam Green, then Imperial Wizard of the Klan, were being circulated here.

In it Mr. Byrd, then resident of Crab Orchard, W.Va., forwarded the name of a person who he said could "do a bang up job as state organized" to head up a new Klan member-

ship drive. Mr. Byrd also wrote:

"I am a former Kleable of the Klu Klux Klan in Raleigh County and adjoining counties of the state, having been appointed to this office [by] Mr. J.L. Baskin of Arlington, Virginia, in 1942."

"The Klan is needed today as never before and I am anxious to see its rebirth here in West Virginia. I have noticed in the press statements pointing to a renewal of its activities in certain Southern states in the Union. It is necessary that the order be promoted immediately and in every state in the Union. Will you please inform me as to the possibilities of rebuilding the Klan realm of W. Va.'0"

The letter first came to light during Mr. Byrd's race for the House of Representatives in 1952. He said that he did not question its authenticity but that he did not remember writing it. He won the election.