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INSIDE WASHINGTON

Fortas' Name to Be Withdrawn?

By ROBERT ALLEN and JOHN GOLDSMITH

Editor's Note: The following views are those of the author and are presented here to give readers a variety of viewpoints. The Tribune's opinions are expressed only in editorials.

There is a possibility that Justice Abe Fortas' elevation to Chief Justice will be withdrawn.

Whether this happens depends on factors that are still developing.

So far, recall of the intensely controversial appointment appears to be the last thing on President Johnson's mind. To all and sundry, he is testily proclaiming his combative determination to "battle it out to the end."

That may well be the President's ego-aroused intention. But time and events have a way of forcing drastic changes.

It is highly significant that recall is being guardedly discussed by Democratic senators who nominally are supporting Fortas' nomination. From their private comments it is very evident they are doing this with utmost seriousness. It's very apparent that's what they would like to see done.

This pronounced backstage hostility in these quarters is extremely important. It graphically reveals the underlying unpopularity of the appointment, and the marked dislike and distrust of Fortas.

He may be a long-time crony of the President, but he has few admirers in the Senate—if any!

That's the basic vulnerability of Fortas' nomination, and why its eventual withdrawal is entirely possible. The simple fact is that Fortas has little personal appeal and strength of his own, and time is running against him.

Although the militant bipartisan opposition is considera-

bly outnumbered, three factors are definitely working to its advantage:

Lack of the required two-thirds Senate majority to impose cloture and cut off prolonged debate. That's admitted even by Administration leaders. As a consequence, the opponents can block a vote on confirmation for an indefinite period. With 22 Democrats up for re-election, at least half of them facing extremely uncertain outcomes, there will be irresistible pressure to adjourn by early October. The House will be particularly insistent on that, as all of its members are up for election and many face tough fights. The President could recall Congress after the November balloting. But that still would not ensure that the opposition would be in a more complaisant mood to allow a vote on the Fortas-Thornberry appointments.

Strongly adverse reaction throughout the Senate to Fortas' admissions that he continued to advise Johnson while on the Supreme Court, and that he had phoned a wealthy former client and sharply admonished him for assailing White House policies. These disclosures made a distinctly sour impression even among those supporting Fortas.

Strong resentment, even among senators who for various reasons are backing the President's two appointments; that in his last months in office he named two cronies to these exalted judicial seats. Throughout the Senate, there is underlying sentiment that these selections were unseemly and unworthy of a President who is notoriously so sensitive about his role in history.

This widespread indignation was pointedly expressed by a leading Democratic liberal, as follows:

"If I have to, I'll vote for

Fortas and Thornberry, but I'll hold my nose when I do so. The President's appointment of these two cronies is a plain outrage. Of all the notable jurists and distinguished members of the bar in our country of more than 200 million people, all the President could do in his final days in office was to nominate two close henchmen.

"It was an act of crass and crude ward politics; patronage of the shabbiest kind. It just goes to show that Johnson can never really rise above his primary wheeler-dealer instincts and habits. What is particularly astounding about it all is that he is now so sensitively conscious of his place in history. He is going to great lengths to make sure it's all written out the way he wants it.

"Yet when it comes to appointing the Chief Justice and an associate justice of the U.S. Supreme Court, he has no qualms about stooping to the ward-politics level and naming two cronies. It beats me. I guess it all gets down to one thing: He just can't rise above himself and really be a statesman. He's a hack politician at heart and can't get over it."