

Supreme Court of the United States.
Washington, D.C.

Pointe-au-Pic, Canada,
September 10, 1922.

My dear Justice Sutherland:

I write to congratulate you from the bottom of my heart on your appointment to the Bench, and upon the reception which your nomination and confirmation have had by the American people. Your capacity and qualification as a lawyer of course go without saying, but added to that you will have that wealth of experience which two terms in the United States Senate have given you, and the familiarity that you have acquired with the methods of business in the executive branch of the Government. I do not minimize at all the importance of having Judges of learning in the law on the Supreme Bench, but the functions performed by us are of such a peculiar character that something in addition is much needed to round out a man for service upon that Bench, and that is a sense of proportion derived from a knowledge of how Government is carried on, and how higher politics are conducted in the State. A Supreme Judge must needs keep abreast of the actual situation in the country so as to understand all the phases of important issues which arise, with a view to the proper application of the Constitution, which is a political instrument in a way, to new conditions. I should judge that the Court is about to enter upon another period of agitation against its powers, such as it had in the period before Marshall came onto the Bench; again after he locked horns with Jefferson and with Jackson; again during the period of the Fugitive Slave law; again during the reconstruction days when Thad Stevens and the radical Republicans defied the Court; and again when Bryan and the income tax decision were made a part of the 1896 campaign. La Follette's overwhelming victory in Wisconsin will put great confidence into the hearts and souls of all who are opposed to property rights and the support which the Constitution gives to them, and who are radically hostile to the existence of

the Supreme Court. It is quite true that the victory in favor of La Follette has a great many explanations for it other than a fundamental radicalism on the part of the people. Wisconsin is a German state and very much opposed to prohibition. It is very much attached to La Follette, because he was pro-German. It is the most socialistic state that we have in the Union – indeed it is peculiarly so – and the labor unions gave especial support to La Follette because he has become their champion. It will probably mean an independent movement – perhaps the formation of an independent party – to nominate La Follette for the Presidency. Johnson and Borah and the other Progressives will have a very hard time supporting La Follette. La Follette's personal peculiarities are such that he must have complete conformity and submission from his subordinates or he quarrels with them. I presume that to nobody was his success more disagreeable than to those two gentlemen. While it is unpleasant, I think perhaps it is well to fight out this issue and develop in its clear and unmistakable features what the labor unions and La Follette have in mind with respect to the Government and the change of its constitutional structure. When that issue arises, I can not believe there is any doubt of the strength of the conservative element in the Republic. It may for the time throw Republicans and Democrats together, as I hope it will. Of course were we to have a radical Congress and a radical Senate, they might take steps either to abolish or to practically destroy much of the useful jurisdiction of the inferior Federal courts. We could be certain that the minute they had any power, they would frighten the country into a reaction, which would teach a permanent lesson, but meantime the cause of justice in the country would suffer. Of course we may count on a lot of weak-kneed people who are conservative when conservatism seems to be strong, and are radical when radicalism seems to be sweeping the country; but there are many elements who do not manifest themselves superficially and seem to remain inert until they are startled by a danger that ought to

have been long foreseen. And it is upon those elements that the hope and confidence in the preservation of our institutions must be based. Meantime there is nothing for the Court to do but to go on about its business, exercise the jurisdiction it has, and not be frightened because of threats against its existence.

It is most interesting, in view of what we may anticipate, to read the history of the Court just published by Warren. I do not agree with a good many of his statements, nor do I subscribe to some of his conclusions, but he has massed together in historical form the history of the Court to show that, with some periods of quiet, its whole history has been one of threat, attack and defeat of its enemies, and it is a proud record that on the whole the Court never bowed its head for motives of political expediency, to yield its conscientious views and convictions to assaults, of which it has had to meet so many in its life of more than a century and a quarter.

I don't know why I have fallen into this disquisition, except that I note in the press a good deal of excitement over the La Follette election and the attacks of labor organizations upon our Court, and I could not refrain from discussing the situation with you as you now come into the Court with a general opinion as to the functions of the Court similar to my own.

Will you kindly convey to Mrs. Sutherland my felicitations upon your deserved appointment to the seat which I know you both most highly value as it ought to be valued.

With warm regard and great respect, believe me,

Sincerely yours,

William H. Taft

Hon. George Sutherland,
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