

## EXECUTIVE SESSION

RAYMOND W. GRUENDER, OF MISSOURI, TO BE UNITED STATES CIRCUIT JUDGE FOR THE EIGHTH CIRCUIT

FRANKLIN S. VAN ANTWERPEN, OF PENNSYLVANIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE THIRD CIRCUIT

THE PRESIDING OFFICER (Mr. COLEMAN). Under the previous order, the Senate will now go into executive session. The clerk will report the nominations.

The legislative clerk read the nominations of Raymond W. Gruender, of Missouri, to be United States Circuit Judge for the Eighth Circuit, and Franklin S. Van Antwerpen, of Pennsylvania, to be United States Circuit Judge for the Third Circuit.

THE PRESIDING OFFICER. There is 15 minutes of debate evenly divided.

Who yields time?

Mr. ALLARD. Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time be equally counted on both sides.

THE PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BOND. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

THE PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BOND. Mr. President, shortly we are going to be voting on the nomination of Raymond Gruender to be United States Circuit Judge for the Eighth Circuit Court of Appeals.

I want to tell my colleagues this is one of the finest young men I know. He worked his way through Washington University, getting an MBA and a law degree in 6 years while working full time to support himself. His personal story is a very touching one, with very significant difficulties which he overcame.

He served as an assistant U.S. Attorney under Republican and Democratic administrations.

He has been in private practice of law and has tried cases in district courts—criminal and a wide range of civil cases.

He served as an appellate lawyer.

Most recently, he has been U.S. Attorney for the Eastern District of Missouri.

I can assure you this is a man who will bring not only integrity, legal skills, and judicial knowledge to the Eighth Circuit, but he is a person of great human understanding and intellect. He will be a pleasure to appear before.

We can be proud the President has nominated a man who has such great respect among the bar in the Eastern District of Missouri and law enforcement

personnel, as well as plaintiffs' and defendants' attorneys.

I urge my colleagues to vote for Raymond Gruender.

Mr. HATCH. Mr. President, I rise today to express my strong support for the confirmation of Raymond W. Gruender, who has been nominated to the U.S. Court of Appeals for the Eighth Circuit.

Our nominee has ideal qualifications for the Federal bench. An honors graduate of Washington University School of Law, Mr. Gruender has nearly ten years of experience as a trial attorney in private practice along with a solid record in public service. He joined the U.S. Attorney's Office for the Eastern District of Missouri as an Assistant U.S. Attorney in 1990, specializing in white collar and economic crimes, including fraud and corruption cases.

Mr. Gruender has the bipartisan support of the Missouri legal community, including: Senators BOND and TALENT; Edward L. Down, Clinton appointed U.S. Attorney for the Eastern District of Missouri; Lee Lawless, First Assistant Federal Public Defender for the Eastern District of Missouri; Howard Shalowitz, President of the Bar Association of Metropolitan St. Louis; Joseph Mokwa, Chief of Police of City of St. Louis; and Dean Joel Seligman, Washington University in St. Louis School of Law.

In 2000, Mr. Gruender returned to the U.S. Attorney's Office in the Eastern District of Missouri, and specialized in fraud and corruption prosecution. A year later, he was unanimously confirmed as the United States Attorney for the Eastern District of Missouri, where he manages both the civil and criminal litigation handled by the office, as well as overseeing the administration of the office, which includes 60 attorneys. Mr. Gruender and his office have been active in helping to reduce violent crime in the St. Louis area. He has also been a leader in strengthening our nation's readiness in the war on terror.

Mr. Gruender also believes in giving back to his community, and in addition to devoting a significant amount of his career to public service, he has been very active in civic affairs. He has volunteered his time on domestic violence issues, serving at various times as President of the Board of Directors, Vice President, and Secretary of Alternatives to Living in Violent Environments, ALIVE. ALIVE is a not-for-profit organization dedicated to eliminating domestic violence. He also serves as a volunteer on the Allocations Committee of the Variety Club of St. Louis, which raises and distributes funds to disadvantaged and disabled children.

Raymond W. Gruender III has a fine background, which will serve him well as a circuit court judge. He will be a terrific addition to the Court, and I urge my colleagues to join me in supporting his nomination.

Mr. LEAHY. Mr. President, earlier this week, we were able to obtain a

firm commitment from the White House that there would be no further judicial recess appointments for the remainder of this presidential term. That undertaking led immediately and directly to the Senate vitiating a cloture vote and proceeding to confirm the nomination of Marcia Cooke to the federal bench in Florida. Today we debate and vote on the nomination of Raymond Gruender to the Eighth Circuit.

Thus, despite the pessimism expressed by some last week, I continued working to conclude an arrangement between the White House and the Senate that would allow additional progress on judicial confirmations. Working with Senator DASCHLE, Senator FRIST, Judge Gonzales and the White House chief of staff Andy Card, we were able to reach an agreement on Tuesday. I again commend our two leaders. I have been working with Senator DASCHLE for months, as well as with the White House, to find a way out of the impasse in judicial confirmations. Senator FRIST and I have spoken at length about this, and he has been working on that, too. I was delighted to see the meeting of Senator DASCHLE, Senator FRIST, and Mr. Card finally take place this week. Most importantly, I was pleased that the White House agreed to no more recess appointments of judges.

I think we have demonstrated our good faith. In the 17 months that the Democrats were in charge of the Senate, we confirmed 100 of President Bush's nominees to lifetime positions on the federal bench. And the Republicans, during the 23 months that they have been in charge of the Senate, have now confirmed another 74. With the consideration of the Gruender nomination today, that total reaches 75.

This is the 75th confirmation for 2003 and 2004, of the 108th Congress. That matches the total for the entire two-year 1995-1996 period in which Republicans controlled the 104th Congress and exceeds the total for the entire two-year 1999-2000 period in which Republicans controlled the 106th Congress. Of course in those years Senate Republicans were reviewing President Clinton's judicial nominees. Further, with 175 confirmations, we will have matched the total confirmation for the most recent 4-year Presidential term 1997-2000.

It is significant that this is the first circuit court nomination the Senate will have considered this Presidential election year. The last time a President ran for reelection was 1996. During that session, with the Republican majority controlling the Senate agenda not a single circuit court nominee was considered. Accordingly, when the Senate acts to confirm the first circuit court nominee this year, we will have bested the total for the entire 1996 session.

I am pleased that the Senate has received assurances from the White House that the President will not further abuse the recess appointment

power by making recess appointments during the remainder of his presidential term. It was the White House's refusal to reach a reasonable accommodation of the concerns of many Senators about the unilateral approach of the President's recess appointments to the federal courts that complicated our efforts to reach an agreement regarding votes on judicial nominees over the past few months. That is demonstrated by the prompt vote and confirmation of Judge Cooke Tuesday afternoon. I was pleased to be able to help facilitate the end of that impasse.

And now we are set to vote on another candidate, the nomination of Raymond Gruender to the U.S. Court of Appeals for the Eighth Circuit. While some have mischaracterized the nominees included in this week's agreement as "noncontroversial," they in fact include a number who will require debate and they will each require a roll call vote.

Unfortunately, Mr. Gruender is another nominee whose record raises concerns, just as have the records of far too many of President Bush's judicial nominees. Mr. Gruender, though only 40 years old, has been a member of the Federalist Society since 1988 and has played a lead role in many national Republican campaigns. For the past two years, Mr. Gruender has served as the U.S. Attorney for the Eastern District of Missouri. In this capacity, he has been a vocal defender of Attorney General John Ashcroft's aggressive and controversial tactics.

He has also been critical of a city that passed a resolution reaffirming the importance of civil liberties in the fight against terrorism. He claimed that the resolution, which aimed to protect freedom of speech, assembly, privacy and due process, is "putting lives in jeopardy and increasing the chances for terrorists to be successful." Mr. Gruender stood by these statements and his criticisms of the resolution at his hearing.

Despite his activities applying the PATRIOT Act as a U.S. Attorney and his public pronouncements about its provisions, Mr. Gruender stated in his answers to my written questions that he has "not formed or expressed any opinions with respect to the constitutionality of any provisions of the PATRIOT Act" and would, if confirmed, protect each citizen's civil rights and civil liberties.

I do hope that, if confirmed, Mr. Gruender will be a person of his word. I hope he will be fair and open-minded, and listen to all arguments involved in such cases. I hope he would not seek to decide cases in accordance with his partisan or personal beliefs rather than in accordance with the law. I also must note that, while he was candid about some of his activities, Mr. Gruender failed to directly answer several questions that I asked him in writing after his hearing, questions that would enable me to fully evaluate his qualifications for a lifetime appointment on the federal bench.

Just as a nominee last year attempted to stonewall Committee Members by not answering questions in a forthright manner, so Mr. Gruender avoided answering some of my questions by claiming that he could not express his views on the issues without a complete factual record and the benefit of the "deliberative process." For example, Mr. Gruender refused to express his opinion about Congress's power under the Commerce Clause, Section 5 of the Fourteenth Amendment, or the 10th or 11th Amendments. This is a timid, evasive and useless response. And many other circuit court nominees of this President have answered the same questions.

Mr. Gruender does, however, have the support of both of his home-State Senators and has served both as prosecutor and a defense attorney.

I am hopeful that he will be open-minded on the bench and will act as he says he will, that he will follow the law and not seek out opportunities to overturn precedent or decide cases in accord with his political beliefs rather than his obligations as a judge. I also sincerely hope that Mr. Gruender will treat all those who appear before him with respect and courtesy and will not abuse the power and trust of his position.

For the last three and one-half years, I have urged President Bush to work with us. Our proceeding today on this nomination demonstrates our going the extra mile.

I would note that President Clinton's nomination of Bonnie Campbell to this court was blocked—by a secret Republican hold—from ever getting Committee or Senate consideration. By contrast, the Senate has already confirmed four of President Bush's nominees to this circuit:—William Riley, Michael Melloy, and Lavenski Smith were confirmed while Democrats held the majority, and, last year, Steven Colloton was confirmed to this court, as well. Mr. Gruender makes the fifth.

With his confirmation, Republican appointees on the Eighth Circuit Court of Appeals will outnumber Democratic appointees by four to one. There will be eight active Republican-appointed judges and only two active Democratic-appointed judges. And there is one more vacancy on this court which President Bush intends to fill with another conservative nominee.

I would note for my friends on the other side of the aisle—who consistently rebuke the Ninth Circuit Court of Appeals as being "too liberal" because 60 percent of the judges are Democratic appointees—that the scales are tipped much farther the other way on the Eighth Circuit. With Democratic cooperation in confirming five of President Bush's nominees to the Eighth Circuit, Republican appointees now occupy 80 percent of the authorized seats on that court.

I congratulate Mr. Gruender and his family on his confirmation today.

Mr. TALENT. Mr. President, United States Attorney Ray Gruender has had

a distinguished career as a public servant and practicing attorney. He is an outstanding and highly qualified candidate as evidenced by his professional and academic credentials.

From humble beginnings, Mr. Gruender has risen to the top of the legal profession. Neither of his parents graduated from high school; his father painted houses; his mother worked in a factory as a bookbinder and is now a prison guard. He has worked since age 10 with his father and he continued to work all through school.

Mr. Gruender obtained three degrees from Washington University in less than 6 years, all while working and paying his own way through school. By 1987, he had obtained Bachelor of Science in Business Administration, Master of Business Administration and Juris Doctoris degrees. Not only did he work twenty hours per week during the 6 years in which he obtained these degrees, but he also ranked near the top of his class in each program. In law school, Mr. Gruender served on the Washington University Law Quarterly and is a member of The Order of the Coif. In December 2003, he was awarded an honorary Doctor of Laws degree by William Woods University in Fulton, Missouri.

Since May 1, 2001, Ray Gruender has served as the United States Attorney for the Eastern District of Missouri. As United States Attorney he oversees an office of 60 Assistant United States Attorneys actively engaged in both civil and criminal matters. During his tenure, the number of Federal firearms prosecutions in his district has increased dramatically. In 2003, the City of St. Louis experienced 69 homicides, the first time it had fewer than 100 homicides in more than 40 years.

Prior to serving as the United States Attorney, Mr. Gruender served as an Assistant United States Attorney—AUSA—between 1990 and 1994 and again between 2000 and 2001. As an AUSA, he specialized in fraud and public corruption matters. He was one of the AUSAs who handled the Second Injury Fund prosecutions involving several lawyers, physicians and an administrative law judge who were defrauding Missouri's workers' compensation system.

In addition to his experience as a Federal prosecutor, Mr. Gruender has spent 9 years in the private practice of law. Between 1987 and 1990, he was an associate with the large St. Louis law firm of Lewis, Rice and Fingersh. Between 1994 and 2000, he as a partner with Thompson Coburn, LLP, another large Missouri firm. He has represented both plaintiffs and defendants in a broad array of civil matters such as admiralty, antitrust, contracts, employment, securities, fraud, banking and various torts claims.

He is a member of the Missouri and Illinois bars, the Bar Association of Metropolitan St. Louis, and has been a member of the Eastern District of Missouri's Criminal Justice Act Lead Counsel Panel, making himself available to accept criminal appointments.

Mr. Gruender also has been active in civil affairs. His numerous civic contributions include serving as a volunteer on the Allocations Committee of the Variety Club of St. Louis to help raise and distribute funds to disadvantaged and disabled children in the St. Louis area. He also served on the Board of Directors—including as board president of—ALIVE—Alternatives to Living in Violent Environments—a not-for-profit entity dedicated to eliminating domestic violence and helping its victims.

I urge all of my colleagues to vote to confirm Raymond Gruender, of Missouri, to be U.S. Circuit Judge for the Eighth Circuit.

Mr. BOND. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I yield time for the minority on the judges matter.

The PRESIDING OFFICER. Without objection, all time is yielded.

The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that there be 4 minutes equally divided between the two votes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. HUTCHISON. Mr. President, have the yeas and nays been asked for?

The PRESIDING OFFICER. They have not.

Mrs. HUTCHISON. I ask for the yeas and nays on the first vote.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Raymond W. Gruender, of Missouri, to be United States Circuit Judge for the Eighth Circuit?

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

Mr. MCCONNELL. I announce that the Senator from Virginia (Mr. WARNER) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 97, nays 1, as follows:

[Rollcall Vote No. 102 Ex.]

YEAS—97

Akaka	Biden	Burns
Alexander	Bingaman	Byrd
Allard	Bond	Campbell
Allen	Boxer	Cantwell
Baucus	Breaux	Carper
Bayh	Brownback	Chafee
Bennett	Bunning	Chambliss

Clinton	Grassley	Murray
Cochran	Gregg	Nelson (FL)
Coleman	Hagel	Nelson (NE)
Collins	Hatch	Nickles
Conrad	Hollings	Pryor
Cornyn	Hutchison	Reed
Corzine	Inhofe	Reid
Craig	Inouye	Roberts
Crapo	Jeffords	Rockefeller
Daschle	Johnson	Santorum
Dayton	Kennedy	Sarbanes
DeWine	Kohl	Schumer
Dodd	Kyl	Sessions
Dole	Landrieu	Shelby
Domenici	Lautenberg	Smith
Dorgan	Leahy	Snowe
Durbin	Levin	Specter
Edwards	Lieberman	Stabenow
Ensign	Lincoln	Stevens
Enzi	Lott	Sununu
Feingold	Lugar	Talent
Feinstein	McCain	Thomason
Fitzgerald	McConnell	Voinovich
Frist	Mikulski	Wyden
Graham (FL)	Miller	
Graham (SC)	Murkowski	

NAYS—1

Harkin

NOT VOTING—2

Kerry

Warner

The nomination was confirmed.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, the nominee for confirmation to the Court of Appeals for the Third Circuit, Franklin Van Antwerpen, has a very distinguished academic record. He has been on the bench for 25 years, 12 years on the State court bench in Northampton County and 13 years on the U.S. District Court for the Eastern District of Pennsylvania. I thank my colleagues, the leaders, and the chairman and ranking member of the Judiciary Committee for working out the impasse. He will be an excellent judge for the Third Circuit.

I yield time to my distinguished colleagues.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I add my congratulations to Judge Van Antwerpen. He has been an excellent public servant and distinguished jurist and will make an excellent contribution to the Third Circuit.

Mr. HATCH. Mr. President, I rise today to express my strong support for the confirmation of Franklin S. Van Antwerpen, who has been nominated to the U.S. Court of Appeals for the Third Circuit.

Judge Van Antwerpen is truly an impressive man and has the enthusiastic support of both Pennsylvania senators, along with a unanimous "Well Qualified" ABA rating.

Judge Van Antwerpen has exceptional qualifications for the Federal appellate bench. After graduation from Temple University School of Law in 1967, he worked as an attorney at the Hazeltine Corporation and served as Chief Counsel of the Northampton Legal Aid Society. He then spent 9 years in private practice, representing both plaintiffs and defendants in general litigation matters, with a particular specialization in municipal law.

In 1979, Judge Van Antwerpen commenced a 25-year career in public serv-

ice when he joined the Court of Common Pleas of Northampton County. He served in this position until 1987, when President Reagan appointed him United States District Judge for the Eastern District of Pennsylvania, the position he holds today.

Judge Van Antwerpen has a fine background which will serve him well as a circuit court judge. He will be a terrific addition to the court, and I urge my colleagues to join me in supporting his nomination.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, today, in addition to voting on the nomination of Raymond Gruender, we vote to confirm another circuit court nominee, Judge Franklin Van Antwerpen to the United States Court of Appeals for the Third Circuit. A Federal District Court judge since he was appointed by President Reagan in 1987, Judge Van Antwerpen comes to the Senate floor strongly supported by the Senior Senator from Pennsylvania, who I know is eager to see him confirmed.

Today's confirmation will make the 76th judge confirmed this year alone and the 176th judicial nominee to be confirmed for this President. With 76 judicial confirmations in just a little more than 16 months, the Senate has now confirmed more Federal judges than were confirmed during the two full years of 1995 and 1996, when Republicans first controlled the Senate and President Clinton was in the White House. It also exceeds the 2-year total for the last 2 years of the Clinton administration, when Republicans held the Senate. In fact, with 176 total confirmations for President Bush in just 3½ years, the Senate has confirmed more lifetime appointees for this president than were allowed to be confirmed in President Clinton's entire second term, the most recent 4-year presidential term. We have already surpassed the number of judicial confirmations won by President Reagan in his entire first term in office.

The confirmation of Judge Van Antwerpen also marks the second circuit court nominee confirmed for President Bush this year, which is double the number of circuit court nominees confirmed in all of 1996, the last time a president was running for reelection and Republicans refused to allow a single circuit court nominee of President Clinton to be confirmed all year. Today we confirm the 32nd circuit court nominee of President Bush, which is more circuit court confirmations than in all 4 years of President Clinton's first term in the White House.

A look at the Federal judiciary in Pennsylvania demonstrates yet again that President Bush's nominees have been treated far better than President Clinton's and shows dramatically how Democrats have worked in a bipartisan way to fill vacancies, despite the fact that Republicans blocked more than 60 of President Clinton's judicial nominees. With this confirmation, 16 of

President Bush's nominees to the Federal courts in Pennsylvania will have been confirmed, more than for any other State except California.

With this confirmation, President Bush's nominees will make up 16 of the 41 active Federal circuit and district court judges for Pennsylvania—that is more than one third of the Pennsylvania Federal bench. With the additional four Pennsylvania district court nominees pending on the floor and likely to be confirmed soon, nearly half of the district court seats in Pennsylvania will be held by President Bush's appointees. Republican appointees will outnumber Democratic appointees by nearly two to one.

This is in sharp contrast to the way vacancies in Pennsylvania were left unfilled during Republican control of the Senate when President Clinton was in the White House. Although Republicans now decry Democratic filibusters of a mere handful of the most extreme nominees, Republicans denied votes to nine district and one circuit court nominees of President Clinton in Pennsylvania alone. Despite the efforts and diligence of the senior Senator from Pennsylvania, Mr. SPECTER, to secure the confirmation of all of the judicial nominees from every part of his home State, there were ten nominees by President Clinton to Pennsylvania vacancies who never got a vote. Despite how well-qualified these nominees were, many of their nominations sat pending before the Senate for more than a year without being considered. Such obstruction provided President Bush with a significant opportunity to shape the bench according to his partisan and ideological goals.

Recent news articles in Pennsylvania have highlighted the way that President Bush has been able to reshape the Federal bench in Pennsylvania. For example, the Philadelphia Inquirer, on November 27, 2003, said that the significant number of vacancies on the Pennsylvania courts "present Republicans with an opportunity to shape the judicial makeup of the court for years to come."

Democratic support for the confirmation of Franklin Van Antwerpen is yet another example of our extraordinary cooperation despite an uncompromising White House and the record of how President Clinton's Pennsylvania nominees fared under Republican control in the Senate. In contrast to many of President Bush's nominees, Judge Van Antwerpen comes to us with a distinguished and widely acclaimed career on the bench—both on the State and Federal levels. He was rated unanimously well-qualified by the American Bar Association and has the respect of his peers on the bench and of the attorneys who appear before him. He is the kind of nominee this President and my Republican colleagues should be looking for as we fulfill our constitutional duty of appointing members to the Federal judiciary—an independent branch of the government.

I congratulate Judge Van Antwerpen and his family on his confirmation today.

The PRESIDING OFFICER. All time is yielded back.

The question is, Will the Senate advise and consent to the nomination of Franklin S. Van Antwerpen, of Pennsylvania, to be United States Circuit Judge for the Third Circuit?

Mr. LEAHY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second. The clerk will call the roll.

The bill clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Texas (Mrs. HUTCHISON) and the Senator from Alabama (Mr. SESSIONS) are necessarily absent.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) and the Senator from Georgia (Mr. MILLER) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 96, nays 0, as follows:

[Rollcall Vote No. 103 Ex.]

YEAS—96

Akaka	DeWine	Lieberman
Alexander	Dodd	Lincoln
Allard	Dole	Lott
Allen	Domenici	Lugar
Baucus	Dorgan	McCain
Bayh	Durbin	McConnell
Bennett	Edwards	Mikulski
Biden	Ensign	Murkowski
Bingaman	Enzi	Murray
Bond	Feingold	Nelson (FL)
Boxer	Feinstein	Nelson (NE)
Breaux	Fitzgerald	Nickles
Brownback	Frist	Pryor
Bunning	Graham (FL)	Reed
Burns	Graham (SC)	Reid
Byrd	Grassley	Roberts
Campbell	Gregg	Rockefeller
Cantwell	Hagel	Santorum
Carper	Harkin	Sarbanes
Chafee	Hatch	Schumer
Chambliss	Hollings	Shelby
Clinton	Inhofe	Smith
Cochran	Inouye	Snowe
Coleman	Jeffords	Specter
Collins	Johnson	Stabenow
Conrad	Kennedy	Stevens
Cornyn	Kohl	Sununu
Corzine	Kyl	Talent
Craig	Landrieu	Thomas
Crapo	Lautenberg	Voinovich
Daschle	Leahy	Warner
Dayton	Levin	Wyden

NOT VOTING—4

Hutchison  
Kerry

Miller  
Sessions

The nomination was confirmed.

Mr. WARNER. Mr. President, I move to reconsider the vote.

Mr. LEVIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005—Continued

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. I join with my colleague in requesting Senators to send in as many amendments as they possibly can. The Senator from Michigan and I will be here tomorrow in hopes that we can clear amendments. There are days when clearances could be facilitated. I think tomorrow is one of those days.

I say to my good colleague, the Senator from Michigan, Mr. LEVIN, am I correct in that?

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. I say to my good friend from Virginia, he is absolutely not only correct but I would join his plea to our colleagues that we make good use of time tomorrow. If Senators are not here, their staff can deliver amendments so at least we can begin to consider them. We can make good use of tomorrow so when we come back we will have to use up less of the Senate's time.

So I join the chairman's plea that Members on both sides of the aisle, who have not filed amendments or given our staffs amendments, do that tomorrow. Let us try to work through some of them. We could clear them tomorrow and, even if we do not have contested amendments tomorrow, we could make some progress on this bill.

Mr. WARNER. I thank my colleague.

The distinguished Senator from Nevada, the Democratic whip, pointed out that he has a count of over 100-odd amendments with which we have to deal. So there is a formidable task ahead of us.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM of South Carolina. The reason I speak as we close out this evening is to comment on a few things about the amendment pending before the Senate in regard to an effort to do two things: to make sure the \$350 million that is available for the Department of Energy to provide cleanup in the States of Washington, Idaho, and South Carolina can move forward without any strings attached, and to ratify an agreement that the State of South Carolina has entered into with the Department of Energy concerning 51 tanks containing high-level waste.

I really do very much like my colleague from Washington, Senator CANTWELL, but we dramatically disagree on this. I cannot emphasize how dramatically we do disagree about what is at stake and what we are trying to accomplish.

My senior Senator from South Carolina could not have been possibly better to me since I have been in the Senate almost 18 months now. He is going through some accusations that I find not consistent with who Senator HOLLINGS is. I am not going to dwell on that, but I believe that most of us who