

That is another example documented by GAO of the temptation to funding programs when you are the tester and the testee. That is what the Warner amendment would do.

So I hope, sincerely, that the Warner amendment can be defeated and that we can move on and adopt the Reed amendment. In the spirit of our prior comments, I will yield back my time.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, I yield myself 1 minute. I want to make a very brief comment, and that is this: The key argument is that the Pentagon's chief tester says the operational test is premature. The Warner second-degree amendment requires the definition of "realistic testing," and it requires a test according to these criteria next year. That means we will get realistic testing years sooner than with the Reed amendment.

The Warner second-degree amendment provides a formal and appropriate role for the Director of the Office of Test and Evaluation in a developmental program. That is an unusual step and actually enhances his role in the ballistic missile test program. It does all this without incurring the cost and delay of the Reed amendment.

Mr. President, I yield back the remainder of my time and ask my colleagues to vote in support of the Warner amendment.

Mr. President, I have a unanimous consent request that I need to propound.

Mr. President, I ask unanimous consent that following the vote in relation to the pending Warner second-degree amendment, the Senate proceed to executive session and consecutive votes on the confirmation of the following nominations: James L. Robart, Roger Benitez, and Jane Boyle. I further ask unanimous consent that prior to each of the judge votes there be 4 minutes equally divided for debate on the nominations; provided further, that following the votes, the President be notified of the Senate's action, and the Senate then resume legislative session.

Mr. REID. Reserving the right to object, Mr. President.

The PRESIDING OFFICER. The assistant Democratic leader.

Mr. REID. Mr. President, I, first, ask the distinguished acting manager to modify his request to have the votes following the Warner second-degree amendment vote to be 10-minute votes.

Mr. ALLARD. I agree to modify the request to 10-minute votes on the two following the initial vote—or does the Senator want all three of them?

Mr. REID. Yes.

Mr. ALLARD. On all three of them.

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

Mr. REID. Further, Mr. President, under the order, as I understand it, prior to voting on the judges, the Senator from Rhode Island has a right to offer an amendment to his amendment, if the Warner amendment is adopted.

The order was he would have the right to offer an amendment; is that right?

The PRESIDING OFFICER. That is the previous order.

Mr. REID. So it is my understanding the Senator from Rhode Island will not offer that amendment now. I ask unanimous consent also, Mr. President—and I think this is in keeping with what Senator WARNER wanted—that following the disposition of these judges, we return to the Defense bill and that the Senator from Rhode Island be recognized to offer another amendment that has already been indicated—I do not know the number of it. It is his second missile defense amendment.

Mr. ALLARD. Missile defense is OK.

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

Mr. ALLARD. Mr. President, I understand we may need to ask for the yeas and nays.

Mr. REID. I ask for the yeas and nays on the Warner amendment.

The PRESIDING OFFICER. The yeas and nays have been ordered on the pending second-degree amendment.

Mr. ALLARD. We are ready to proceed to the vote, Mr. President.

The PRESIDING OFFICER. The question is on agreeing to the Warner amendment No. 3453. The clerk will call the roll.

The assistant legislative clerk call the roll.

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

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

The result was announced—yeas 55, nays 44, as follows:

[Rollcall Vote No. 125 Leg.]

YEAS—55

Alexander	Dole	Miller
Allard	Domenici	Murkowski
Allen	Ensign	Nelson (NE)
Bayh	Enzi	Nickles
Bennett	Fitzgerald	Roberts
Bond	Frist	Santorum
Brownback	Graham (SC)	Sessions
Bunning	Grassley	Shelby
Burns	Gregg	Smith
Campbell	Hagel	Snowe
Chafee	Hatch	Specter
Chambliss	Hutchison	Stevens
Cochran	Inhofe	Sununu
Coleman	Kyl	Talent
Collins	Landrieu	Thomas
Cornyn	Lott	Voinovich
Craig	Lugar	Warner
Crapo	McCain	
DeWine	McConnell	

NAYS—44

Akaka	Dorgan	Levin
Baucus	Durbin	Lieberman
Biden	Edwards	Lincoln
Bingaman	Feingold	Mikulski
Boxer	Feinstein	Murray
Breaux	Graham (FL)	Nelson (FL)
Byrd	Harkin	Pryor
Cantwell	Hollings	Reed
Carper	Inouye	Reid
Clinton	Jeffords	Rockefeller
Conrad	Johnson	Sarbanes
Corzine	Kennedy	Schumer
Daschle	Kohl	Stabenow
Dayton	Lautenberg	Wyden
Dodd	Leahy	

NOT VOTING—1

Kerry

The amendment (No. 3453) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 3354

Mr. WARNER. Mr. President, I would like to have a clarification about the standing order with regard to the amendment of the distinguished Senator from Rhode Island.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as amended.

Without objection, the amendment, as amended, is agreed to.

The amendment (No. 3354) was agreed to.

## EXECUTIVE SESSION

### NOMINATION OF JAMES L. ROBERT TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WASHINGTON

The PRESIDING OFFICER. The Senate will now go into executive session to consider nominations.

The clerk will report the first nomination.

The legislative clerk read the nomination of James L. Robart, of Washington, to be United States District Judge for the Western District of Washington.

Mr. WARNER. Mr. President, could I inquire of the Presiding Officer, are these three votes 10 minutes each?

The PRESIDING OFFICER. The Senator is correct.

There is 4 minutes of debate equally divided.

Who yields time?

Ms. CANTWELL. Mr. President, this afternoon it is my privilege to introduce you to the incredibly talented nominee for a vacancy on the District Court for the Western District of Washington, James Robart.

In one sense, today's confirmation vote is a homecoming for Mr. Robart. Early in his career, he served as an aide to Senator Scoop Jackson. I am sure that he would be proud of his accomplishments during a long and productive legal career, and would wholeheartedly endorse his confirmation.

Following his public service as a staff member in both Houses, Mr. Robart returned to Washington State, where he has worked as an attorney for the past three decades. During his considerable years of practice in Federal court, he has earned a reputation for fairness and integrity.

Mr. Robart's nomination is the result of a bipartisan selection process that has worked very well for Washington State. Members of Washington State's legal community, the White House, and my colleague Senator PATTY MURRAY and I worked together to review a group of applicants. This cooperative approach has produced a number of highly qualified judicial nominees, and

I believe it is a sound model for other States.

I am confident that James Robart will make an outstanding Federal judge, and that the people of the Western District of Washington will be well-served by his presence on the bench.

I am pleased to offer Mr. Robart my full support, and I urge my colleagues to approve his nomination.

Mr. LEAHY. Mr. President, today the Senate considers the nomination of James Robart, to be a United States District Judge for the Western District of Washington. He is a graduate of Whitman College and the Georgetown University Law Center. Mr. Robart is currently managing partner at the law firm of Lane Powell Spears Lubersky, LLP, a firm he has worked at for over 30 years. He has handled complex commercial litigation matters including class actions, securities, and employment cases, and has also been involved in counseling clients in the areas of antitrust compliance, employment law, and intellectual property.

Mr. Robart's nomination is the product of a bipartisan judicial nominating commission maintained with the White House by Senators MURRAY and CANTWELL. The State of Washington is well-served by its bipartisan judicial nominating commission which recommends qualified, moderate nominees on whom members of both parties can agree. It is difficult to understand why President Bush has opposed similar bipartisan selections commissions and why this one was so hard to establish. They allow Republicans and Democrats to work together to staff an independent judiciary. I thank Senators MURRAY and CANTWELL for their steadfast efforts in maintaining the commission. The Senate just recently confirmed another well-qualified nominee to the District Court for the Western District of Washington, Judge Martinez, and, with today's vote, the Senate will have confirmed four nominees—all the product of the bipartisan commission—to the district courts in Washington. With this confirmation, there will be no further vacancies in the district courts in Washington.

I would note that, in proceeding to a vote on Mr. Robart, the Republican leadership has again decided to depart from the order of the Executive Calendar and to skip over the nomination of a non-controversial and well-qualified Hispanic nominee to the U.S. District Court for the Eastern District in Pennsylvania, Juan Ramon Sanchez. That is their choice. I do not want to see the Democrats blamed for any delay in confirmation votes for Hispanics when Republicans have controlled the agenda.

With this confirmation we will have confirmed more judges this year than in all of the 1996 session, the last time a President was seeking reelection.

With this confirmation and two more today, the Senate will have confirmed a total of 89 judges this Congress and 189 of this President's judicial nomi-

nees overall. With 89 judicial confirmations in just a little more than 17 months, the Senate has 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 at the end of the Clinton administration, when Republicans held the Senate majority in 1999 and 2000.

With 189 total confirmations for President Bush, 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 four-year presidential term and more than were confirmed in President Reagan's term from 1981 through 1984. Of course President Reagan is acknowledged as the all-time champ for having appointed more federal judges than any other President in history.

I congratulate Mr. Robart and his family on his confirmation.

Mr. HATCH. Mr. President, I am pleased today to speak in support of James Robart, who has been nominated to the U.S. District Court for the Western District of Washington.

Mr. Robart has exceptional qualifications for the Federal bench. After graduating from Georgetown University Law Center in 1973 where he was the administrative editor of the Georgetown University Law Review, he joined the law firm of Lane, Powell, Moss & Miller, which is now known as Lane Powell Spears Lubersky LLP.

Mr. Robart became a partner in that firm in 1980, and subsequently became the managing partner and later the sole managing partner—a position that he holds today. During his time at the firm, Mr. Robart has specialized in complex commercial litigation with an emphasis on class actions, securities, and employment law.

He brings a wealth of trial experience to the Federal bench after trying in excess of 50 cases to verdict or judgment as sole or lead counsel, and he has been active in the representation of the disadvantaged through his work with Evergreen Legal Services and the independent representation of Southeast Asian refugees.

Mr. Robart's impressive credentials are reflected in his unanimous American Bar Association rating of Well Qualified. I am confident that he will be a fine addition to the bench and urge my colleagues to join me in supporting his confirmation.

Mr. HATCH. Mr. President, this side is willing to yield all remaining time on all three judges.

The PRESIDING OFFICER. All time is yielded.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is, Will the Senate advise and consent to the confirmation of

the nomination of James L. Robart, of Washington, to be United States District Judge for the Western District of Washington?

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.

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

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 126 Ex.]

YEAS—99

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

NOT VOTING—1

Kerry

The nomination was confirmed.

NOMINATION OF ROGER T. BENITEZ TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF CALIFORNIA

The PRESIDING OFFICER. The clerk will report the next nomination.

The assistant legislative clerk read the nomination of Roger T. Benitez, of California, to be United States District Judge for the Southern District of California.

Mr. LEAHY. Mr. President, today the Senate considers the nomination of Roger Benitez to the Southern District of California. Judge Benitez is being considered for the last of 5 new seats in the Southern District of California that were created by statute on November 2, 2002, as part of a package of judgeships created for border districts that have a massive caseload and that needed more Federal judges. I worked hard with Senator FEINSTEIN to help create these new positions under Democratic Senate leadership. By doing so, we did what the Republican majority refused to do in the years 1995 through 2000 when there was a Democratic President. We did so under Senate Democratic leadership knowing