

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 comanaging 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	Voivovich
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

that the appointments would be made by a Republican.

Unlike many other nominees who have come before this Committee, Roger Benitez comes before us with judicial qualifications, having had experience serving as a judge both in State and Federal courts. He served for 4 years as a California Superior Court Judge for Imperial County and 3 years as a U.S. Magistrate Judge for the Southern District for California.

However, like many nominees of this President, concerns have been raised about this nominee's fitness to serve. Judge Benitez is one of 28 of President Bush's nominees who have received a partial or majority rating of "Not Qualified" from the ABA Committee that conducts a peer evaluation of judicial nominees. Of those, 18 have already been confirmed and another has been recess appointed.

Before President Bush ejected the ABA from the process of providing an informal rating prior to a nomination, temperament or ethics concerns would have been raised at the early stage of a nominee's consideration and in time for the White House to make a decision whether to proceed with that nominee, with knowledge of such determinations and the opportunity to conduct follow-up inquiry. The change in the role of the ABA has led to ABA ratings being less helpful. In Judge Benitez's case, based on interviews with 23 judges and 44 attorneys, more than 10 members of the ABA committee concluded that, based on his temperament, he is not qualified to serve a lifetime appointment on the Federal bench.

Despite these concerns, Judge Benitez is supported by both of his home-State Senators and is the product of the bipartisan commission that Senators FEINSTEIN and BOXER have worked so hard to maintain. I will honor their support of this nominee and support him, as well. With this confirmation, the Senate will have confirmed 14 nominees to the district courts in California.

Judge Benitez is the 17th Latino confirmed to the Federal courts in the past three years. With the exception of Mr. Estrada, who failed to answer many questions and provide the Senate with his writings and views, we have pressed forward to confirm all of the other Latinos whose nominations have been reported to the floor. Democrats will now have supported the swift confirmation of 17 of President Bush's 21 Latino nominees. Unfortunately, Republicans have been delaying Senate consideration of a number of Hispanic nominees and passed over several of the numbers would be even better.

While President Clinton nominated 11 Latino nominees to Circuit Court positions, 3 of those 11 were blocked by the Republican Senate and never given a vote. President Bush has only nominated 4 Latino nominees to Circuit Court positions, three of whom have been confirmed with Democratic support. President Bush's 21 Latino nomi-

nees constitute less than 10 percent of his nominees, even though Latinos make up a larger percentage of the U.S. population. It is revealing that this President has nominated more people associated with the Federalist Society than Hispanics, African Americans and Asian Pacific Americans, combined. While President Clinton cared deeply about diversity on the Federal bench, this President is more interested in narrow and slanted judicial ideology.

I congratulate Judge Benitez and his family on his confirmation.

Mr. HATCH. Mr. President, I rise today to express my unqualified support for the nomination of Robert Benitez to the District Court for the Southern District of California and to urge my colleagues to confirm this fine nominee.

Born in Havana, Cuba, Judge Benitez's life embodies the spirit and strength of this Nation. After coming to this country, he obtained a law degree from the Western State University College of Law in 1978, and then distinguished himself in a diverse and successful law practice. The people of California recognized his obvious ability and appointed him to the Superior Court in 1997. He was re-elected to that court in 1998, and served with distinction until 2001. Since that time, Judge Benitez has served as a Federal magistrate judge in the Southern District of California.

Mr. Benitez is an exceptional nominee. I fully expect him to serve with distinction on the Federal bench in California.

Mr. DURBIN. Mr. President, I oppose the nomination of Roger T. Benitez to be a United States District Judge for the Southern District of California because this nominee received a rating by the American Bar Association of "substantial majority Not Qualified." More than 10 members of the 15-member ABA evaluation committee agreed that Magistrate Judge Benitez is unqualified for this position. The ABA conducts thorough background investigations of all of the President's Article III judicial nominees.

At the February 25, 2004 nomination hearing of Judge Benitez, ABA officials made the following statements on the record:

Judge Benitez is "arrogant, pompous, condescending, impatient, short-tempered, rude, insulting, bullying, unnecessarily mean, and altogether lacking in people skills."

Judge Benitez "would often become irrationally upset and outraged if an attorney who had been appointed to represent a defendant had a scheduling conflict and asked another equally competent and prepared attorney to appear before the nominee."

Interviewees had "grave doubts about Judge Benitez' ability to competently handle the more demanding docket caseload of a Federal district judge and efficiently manage a district courtroom, based on their perception of his very slow and rigid manner of handling his current court calendar."

"Based on their exposure to the nominee's mode of relating professionally to others in his official capacity as a judge, interviewees

expressed doubt over Judge Benitez's ability to become an accommodating and collegial member of the Federal district court."

"[T]he nominee's temperament problems are compounded by the fact that Judge Benitez fails to appreciate the depth of concern by the bench and bar regarding his temperament and has not demonstrated that he is willing or able to address those concerns."

"Our committee members, after reviewing my report on the nominee, were particularly concerned about the clear, consistent pattern to the criticisms that emerged from the interview."

These statements are highly troubling, and they strongly suggest that Judge Benitez is not prepared for this important lifetime position.

I am also concerned about the ABA's discovery that Judge Benitez has a practice of limiting the number of guilty pleas that he accepts on a given day. The ABA said that this practice was "highly unusual compared to most other Federal judges, who will typically hear several matters in a day of the kind Judge Benitez has on his docket."

The ABA did not make these allegations or reach the rating of Not Qualified lightly. The ABA investigator, Richard M. Macias, conducted interviews with 23 judges and 44 attorneys, and two-thirds of those interviewed raised concerns, including a majority of both judges and lawyers. The comments were based on first-hand knowledge or observation. The ABA reports that "[t]he negative comments about Judge Benitez' temperament reflected a consistent pattern over the years up to the present time."

Mr. Macias, a respected member of the legal profession and an experienced ABA investigator, said that he has never received so many negative comments about a judicial nominee in the 10 years he has been conducting background investigations. Mr. Macias was supported in his testimony by Thomas Z. Hayward, Jr., a respected Chicago attorney and chair of the ABA's Standing Committee on Federal Judiciary.

When he took office, President George W. Bush abolished the historic practice—dating back to President Eisenhower—of seeking the views of the ABA, the Nation's largest association of attorneys, before making an Article III judicial nomination. One of the main reasons that presidents waited for the ABA evaluation was to avoid nominating unqualified nominees and prevent situations like the one we face today with Judge Benitez. Past Presidents often decided not to nominate individuals who received ABA ratings of Not Qualified. President Bush would be wise to reinstate the ABA's traditional role in the judicial nomination process.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Roger T. Benitez, of California, to be United States District Judge for the Southern District of California?

Mr. REID. 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 assistant 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 98, nays 1, as follows:

[Rollcall Vote No. 127 Ex.]

YEAS—98

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

NAYS—1

Durbin

NOT VOTING—1

Kerry

The nomination was confirmed.

NOMINATION OF JANE J. BOYLE TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF TEXAS

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

The legislative clerk read the nomination of Jane J. Boyle, of Texas, to be United States District Judge for the Northern District of Texas.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I wonder if Senator REID and Senator WARNER are here. I want to clarify the length of time which the next amendment will take. My understanding is that Senator REED's amendment might take as little as 10 minutes; in which case, it would make sense to stack his vote with the vote on the Biden amendment which would then be 2 hours later. However, if there is objection to that, I think people should be informed there could be another vote after this final vote on judges in about 10 or 15 minutes.

I am wondering if Senator WARNER is here.

Mr. WARNER. He is right here.

Mr. LEVIN. Is Senator REID here?

Mr. REED. I am here.

Mr. LEVIN. Senator Harry Reid, too.

Mr. WARNER. Mr. President, for the convenience of the Senate, stacking the two votes is quite acceptable.

Mr. LEVIN. Should I make a unanimous consent request? I think Senator HATCH—

Mr. WARNER. I discussed it with him, and it is fine.

Mr. LEVIN. Mr. President, I ask unanimous consent that after this vote, there then be a period of time to debate the Senator Jack Reed amendment, which we expect would be short. We would immediately go to the Biden amendment.

Mr. WARNER. Mr. President, we were going to intersperse a Sessions amendment for 30 minutes.

Mr. LEVIN. I will amend that to ask that immediately after Jack Reed's amendment, there be a Sessions amendment for 30 minutes equally divided, and that we then go to a Biden amendment for perhaps as much as 2 hours, and there be three votes stacked at that point.

The PRESIDING OFFICER. Is there objection?

Mr. LEVIN. Excuse me. Do we have a copy of the Sessions amendment? Is Senator SESSIONS here?

Mr. WARNER. He is not here.

Mr. LEVIN. So there will be no time agreement on the Sessions amendment until we know which amendment it is.

Mr. WARNER. We must check with our Finance Committee regarding the time on the Biden amendment. We are trying to work toward putting the votes in one batch.

Mr. LEVIN. Mr. President, I revise that unanimous consent request to ask that immediately after the debate on Senator REED's amendment, it be laid aside and we proceed to a debate on the Sessions amendment; that it then be laid aside and we then go to the Biden amendment, and we will hopefully have three votes at that time.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Texas is recognized.

Ms. HUTCHISON. Mr. President, the nominee we are going to vote on, Jane Boyle, has served our country in so many positions: U.S. magistrate, where she had an outstanding record, as our U.S. Attorney, where she had an equally outstanding record. She has shown fairness, a judicial temperament, and great leadership in every position she has held.

Mr. President, I am proud to have recommended her nomination along with my colleague, Senator CORNYN, and before that, Senator Gramm. We have never been disappointed in Jane Boyle's performance, and know she will be an outstanding judge.

I urge a vote for her nomination.

Mr. LEAHY. Mr. President, I also support the nomination of Jane J. Boyle.

Mr. President, Ms. Boyle is currently the United States Attorney for this district. She comes to the Senate with extensive litigation and judicial experience. Before serving as the Northern District's U.S. Attorney, Ms. Boyle served for over a decade as a United States Magistrate and she served for years as a Federal and city prosecutor. I support Ms. Boyle's nomination.

With the three judicial confirmation votes today, the Senate will now have confirmed 20 judicial nominees this year alone. Only 17 judges were confirmed under Republican leadership in the entire 1996 session and no circuit court nominees were confirmed that entire time. That was the last year in which a President was seeking reelection. The Senate has now exceeded the number of total judges confirmed and the number of circuit court judges confirmed.

With these three confirmations today, the Senate will have confirmed a total of 89 judges this Congress and 189 of this President's judicial nominees 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 two-year total at the end of the Clinton administration, when Republicans held the Senate majority in 1999 and 2000. It is not quite as many as the 100 judges nominated by President Bush that a Democratic-led Senate confirmed in our 17 months in the majority in 2001 and 2002.

With 189 total confirmations for President Bush, the Senate has confirmed more lifetime appointees for this President than were allowed to be confirmed in the most recent four-year presidential term that of President Clinton from 1997 through 2000. It is more than a Republican majority confirmed in President Reagan's entire term from 1981 through 1984. Of course, President Reagan is recognized as the all-time champ in terms of judicial appointments having appointed more than any other President in our history.

I congratulate Ms. Boyle on her confirmation.

Mr. HATCH. Mr. President, I rise in support of the confirmation of Jane J. Boyle to the U.S. District Court for the Northern District of Texas. I have had the pleasure to review Ms. Boyle's distinguished career and I am confident that she will make a fine Federal judge.

Jane J. Boyle is an extremely experienced attorney who has tried over 180 cases to a verdict during her impressive career as an assistant district attorney, an assistant U.S. attorney, and as the U.S. attorney for the Northern District of Texas. She has also served with distinction as a magistrate judge in the same district. Ms. Boyle brings a wealth of experience to the Federal