

Nicholson assured hospital employees and veterans gathered for his visit that no decision had been made about the facility's fate and that he had "no predispositions about this at all."

Nicholson, who visited the facility at the request of Sen. Kay Bailey Hutchison (R-Tex.), said he was concerned about the 300,000 square feet of vacant space at the Waco VA. A local advisory group suggested filling the space with nonprofit organizations such as the Salvation Army, which could tailor their services to veterans' needs.

Nicholson will make his decision about the Waco VA early next year, including a proposal to transfer its psychiatric and post-traumatic stress disorder services to Austin and Temple. He warned those gathered that his visit should not be interpreted as "an interception of the process." And he complimented the hospital for its track record. "This is the way the American people want veterans to be taken care of," he said.

As for the hospital's fate, Nicholson said, "the binding question is what's going to be the best for our vets? . . . They did what was best for us and for our country."

Mrs. MURRAY. I know the Senator from Texas was there and was quite startled to hear about the blind rehab unit at the Veterans Affairs Medical Center in Texas and how they have been serving older veterans, but in fact this year they are beginning to see a new type of patient—veterans in their early 20s with macular degeneration or diabetes-induced vision problems. I think it goes to the point of exactly why we are seeing such a tremendous shortfall in the VA today—because of the types of injuries our returning soldiers are having.

I welcome my colleague's cosponsorship, and I agree we do need to look at 2006. We will work with her and the VA Secretary and all Senators on making up the shortfall. But we are here today with the Murray amendment because there has been some confusion in the Senate about how much aid we are going to send to the Veterans Department. We have heard a lot of numbers thrown around and a lot of discussion, but I think why I am here today and why it is so critical is because in the early morning hours just before our July 4 recess, some Senate leaders moved we lay down in deference to the House of Representatives' lower number.

I think in the Senate we need to say there is no confusion. On a unanimous vote we supported \$1.5 billion. The Appropriations Committee, hours after the House tried to limit funding for veterans, unanimously affirmed our support for \$1.5 billion and now the Senate has an opportunity before us to tell our veterans we will do all we can, all we promised, to support and care for them when they return home.

Make no mistake, this Department needs the money. Even before the dramatic, unconscionable shortfall at the Department was revealed, veterans around the country were facing long lines and crumbling facilities. We know the promised clinics are not there, and we know the soldiers returning with posttraumatic syndrome are not being served. The money is critical. I ask the

Senate this morning to say we are sticking with the \$1.5 billion shortfall.

Mr. President, I ask unanimous consent that Senator FEINSTEIN be added as a cosponsor.

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

Mrs. HUTCHISON. Mr. President, I would be happy to yield the remainder of our time to Senator MURRAY.

Mrs. MURRAY. How much time remains?

The PRESIDING OFFICER. There is a total of 2 minutes remaining.

The Senator from Washington is recognized.

Mrs. MURRAY. I thank my colleague from Texas.

I remind all of our colleagues we should not be nickling and diming the Department of Veterans Affairs today. For all of us who have been out on the ground visiting our VA clinics, talking to our soldiers who are returning, it is very clear this war has created a need and demand for us to be there. When we call up our soldiers, we promise them we will be there for health care. It is not right that we sit in hearings and community meetings as I did last week and hear veterans saying: I finally gave up; I went and paid for health care out of my own pocket. That is not what we promised them and that is not a way to get new soldiers which we obviously need to do today.

A train wreck is coming in 2006. I will work with all of my colleagues. I know the administration is looking at sending over a budget amendment and I agree we need to find the money. But for right now we need to pass an emergency supplemental. This Senate has gone on record in the full Appropriations Committee and in this full body and we should have no backtracking. That is why we are voting on this amendment today, once again, to reaffirm our commitment and tell all the men and women who have served us both in this war and in previous wars that we will be there for them.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER (Mr. BURR). The Senator from Texas has 30 seconds remaining.

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

The PRESIDING OFFICER. They have not been ordered.

Mrs. HUTCHISON. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second. The yeas and nays are ordered.

All time having expired, the hour of 12 o'clock having arrived, the question is on agreeing to the Murray amendment. The yeas and nays have been ordered. The clerk will call the roll.

The assistant journal clerk called the roll.

Mr. McCONNELL. The following Senators were necessarily absent: the Senator from Tennessee (Mr. ALEXANDER), the Senator from Mississippi (Mr.

LOTT), the Senator from Alabama (Mr. SESSIONS), and the Senator from South Dakota (Mr. THUNE).

Further, if present and voting, the Senator from Tennessee (Mr. ALEXANDER), and the Senator from Alabama (Mr. SESSIONS) would have voted "yea."

Mr. DURBIN. I announce that the Senator from Maryland (Ms. MIKULSKI) is necessarily absent.

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

The result was announced—yeas 95, nays 0, as follows:

[Rollcall Vote No. 174 Leg.]

YEAS—95

Akaka	Dodd	Lugar
Allard	Dole	Martinez
Allen	Domenici	McCain
Baucus	Dorgan	McConnell
Bayh	Durbin	Murkowski
Bennett	Ensign	Murray
Biden	Enzi	Nelson (FL)
Bingaman	Feingold	Nelson (NE)
Bond	Feinstein	Obama
Boxer	Frist	Pryor
Brownback	Graham	Reed
Bunning	Grassley	Reid
Burns	Gregg	Roberts
Burr	Hagel	Rockefeller
Byrd	Harkin	Salazar
Cantwell	Hatch	Santorum
Carper	Hutchison	Sarbanes
Chafee	Inhofe	Schumer
Chambliss	Inouye	Shelby
Clinton	Isakson	Smith
Coburn	Jeffords	Snowe
Cochran	Johnson	Specter
Coleman	Kennedy	Stabenow
Collins	Kerry	Stevens
Conrad	Kohl	Sununu
Cornyn	Kyl	Talent
Corzine	Landrieu	Thomas
Craig	Lautenberg	Vitter
Crapo	Leahy	Voivovich
Dayton	Levin	Warner
DeMint	Lieberman	Wyden
DeWine	Lincoln	

NOT VOTING—5

Alexander	Mikulski	Thune
Lott	Sessions	

The amendment (No. 1129) was agreed to.

Mrs. MURRAY. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I ask unanimous consent to speak as in morning business for 6 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Massachusetts is recognized for 6 minutes.

Mr. KENNEDY. I thank the Chair.

SELECTING A SUPREME COURT JUSTICE

Mr. KENNEDY. Mr. President, President Bush met this morning with the leaders of the Senate and the Judiciary Committee, and I am sure we all have the same questions. Was this really the first step in a serious consultation process that will be meaningful and will continue in the days and weeks ahead? Will the process result in an effort to select nominees who can bring

the Nation and the Senate together instead of further dividing us?

I sincerely hope the answer to those questions is “yes.” Consultation is more than a process, it’s about an outcome. I hope we are not just going through the motions. That will be up to the President. True consultation is not a one-sided conversation. The President must share his thoughts with all of us as well. I firmly believe the Nation wants and needs us to proceed in good faith and with open minds. The conditions are right for serious cooperation between the Senate and the executive, whom the Framers of the Constitution made “jointly” responsible for assuring the quality and independence of the Federal judiciary.

The President has won a second term and does not have to run again. He is freer to carry out his desire to be a uniter, not a divider, despite the pleas from the fringes of the party he leads.

Notwithstanding the constant clamor from the right, the public obviously does not support extreme right-wing positions on key court-related issues. Most Americans opposed the effort by some in Congress to order the courts to intrude into private medical decisions in the Schiavo case. Most Americans also rejected the idea that 200 years of Senate history should be reversed in order to give a narrow Senate majority the absolute power to approve extreme judges.

Our constituents wonder why we seem to spend so much time shouting angrily at one another. “Washington” has lost the respect of many Americans because of the atmosphere of confrontation and conflict that pervades Congress and the executive branch. They much prefer us to spend more time and thought on finding common ground. They know that their families, their local governments, their schools, and their own businesses, could not function if they operated in the kind of hostile, polarized environment that often seems to prevail on issues here.

Since the selection of judges is an area where the constitutional Framers placed the decision in the hands of the Senate and the President, we have a special obligation to make choices and take positions that facilitate cooperation and consensus, and avoid choices and positions that provoke confrontation and conflict.

History demonstrates that the Senate and the President can work together on judicial nominations, especially Supreme Court justices. Many of us have been here for the nominations of numerous new Justices—in my case 18 of them. On 13 of those, there was a consensus, with close to 90 percent more of the Senators voting for confirmation. On 5, there was a unanimous vote in the Senate.

It is not difficult to achieve that kind of consensus. We know what the Court needs and what the country expects. Nominees should be excellent lawyers who respect the Constitution, understand the law, and understand

and respect the vital role of the judiciary in our Government. Most of the public do not want judges whose goal is to advance a result-oriented agenda, or to take the law on detours of their own. They want judges who proceed from the basic principles that unite us, as reflected in the Constitution and in two centuries of our shared history.

Most Americans would agree with Chief Justice John Marshall that to keep the Constitution relevant and responsive, judges have to be willing to look at it not as an inflexible and technical “legal code,” but as a document that sets forth “great outlines” and important goals, with the details to be filled in later, by Congress and the Courts. Certainly, when the Framers wrote the copyright clause of the Constitution, they never contemplated computer downloading, but their objective in that clause is something on which laws and legal decisions can build.

Of course, in the minds of most Americans, what defines this country, and about which our courts must be deeply concerned about is our rights and liberties. That is what our ancestors fought for two centuries ago. That is why the Framers spent so much of their time and effort on a governmental structure and a bill of rights establishing and protecting our freedoms—both freedoms to and freedoms from. That is why we fought a civil war to expand freedom. That is why our ancestors came to these shores in the 1800’s 1900’s why people everywhere still want to come here. There is no freer place in the world, and we must find judges who agree that their first obligation is to keep it that way: to safeguard those freedoms.

Our judges must therefore be aware of freedom’s history, so that they know what happens when we are tempted to dilute bedrock rights and liberties by subordinating them to short-term political expediency. The notorious “Palmer raids” after World War I, the internment of Japanese Americans during World War II, and the McCarthy era during the cold war are obvious examples of past abuses of which Supreme Court nominees should be well aware.

Next only to protection of their freedoms, Americans expect and want fairness. That means the rights and freedoms we cherish must be applicable to all—rich and poor, popular and unpopular, powerful and powerless—especially the poor, the unpopular and the powerless who may have no other recourse. That is what makes America very special among all the nations of the world. Courts cannot cure all the ills of society, but a court system that purports to provide legal remedies for legal wrongs must make those remedies real. It cannot be credible if it erects impenetrable barriers of money, process, or theory that deprive a right of any meaningful reality.

The American people understand that our system of checks and balances

is a cornerstone of our basic rights and liberties. They want us to make sure that the judges we confirm will not permit unconstrained Executive power to usurp legislative power or judicial power. They certainly do not want the Congress or the President to control or interfere with the judiciary. They surely want an independent judiciary.

We can look deeper into each of these general principles on which there is a national consensus, and find areas of agreement and disagreement, but they are clearly a guide for choosing a Supreme Court nominee who can achieve a broad consensus in Congress and the country.

We cannot do so if we adopt an ideological standard promoted by a narrow group as the first principle of the process. It makes no sense to delegate the process to groups or their supporters within the government whose personal goal is to limit the range of nominees to those who will advance their own ideological agenda.

Clearly, the choice is the President’s. We can help him if he chooses the route of cooperation and consensus. Hopefully, he will not follow the advice of those who want to pick fights instead of picking judges.

I would like to see a wide open process that begins with a search for Republicans in all walks of legal life—not just judges—selected for the quality of their minds and their commitment to the law, rather than for their adherence to extreme ideologies. I am confident such a search would produce a wide range of eligible candidates who might be able to gain a consensus in the legal profession, among the American people and with the Senate.

President Bush has a unique opportunity to unite us, not divide us. He has an extraordinary chance to do so with this nomination and perhaps other Supreme Court nominations to come. If he does, American people and American history will thank him.

Mr. President, I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:38 p.m., recessed until 2:16 p.m. and reassembled when called to order by the Presiding Officer (Mr. CHAMBLISS).

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2006—Continued

The PRESIDING OFFICER. There will now be 90 minutes of debate equally divided on the Collins and Feinstein amendments.

Who seeks time?

The Senator from Texas.

Mr. CORNYN. I yield myself 20 minutes from the time allocated for the proponents of the Feinstein-Cornyn amendment.