

judges through who get nominated by the President, and then let's vote up or down one way or the other. Let's consider them and let's get a minimum number. We had an agreement for three by the Memorial Day break. One was approved. There are several highly qualified judges in the system. For us to be able to get our business done, if we are going to get it done, we have to get some of these circuit court judges approved. If we don't, it is going to stall the body and we are going to stall it a lot, until we can get circuit court judges approved in some minimal number.

I know there is a lot of dispute about this. It is a need of this body. We need to do this and if we don't do it, things are going to slow down a lot. They are going to get jammed up a lot and it is going to be early and it is going to be very difficult for us to accomplish any other of our business.

I urge the leadership to come together and let's say: Here is the number we can approve by this date, and let's get that done or there are going to be a lot of things that are going to stop happening in this body until we can get those approved.

I yield the floor.

Mr. WARNER. Mr. President, it is my understanding that we are in morning business.

The PRESIDING OFFICER. That is correct.

Mr. WARNER. And that we will go on the bill, I understand, around noon?

The PRESIDING OFFICER. The Senator is correct. It will be approximately noon.

#### ORDER OF PROCEDURE

Mr. WARNER. Mr. President, at this time I ask unanimous consent that the three Senators—Senators WARNER, LIEBERMAN, and BOXER—could have 1 hour between 2 and 3.

The PRESIDING OFFICER. Is there objection?

Mr. WARNER. I thank the Chair.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The senior Senator from Washington State is recognized.

#### AERIAL REFUELING TANKERS

Mrs. MURRAY. Mr. President, over the years this Congress has spent countless hours fighting for the best and the safest equipment possible for our men and women in the military. Whether it was better weapons or enough body armor, armored humvees, we have all worked tirelessly to make sure our troops around the world have what they need to do their jobs and return home safely to their families.

I come to the floor today because the Pentagon is now on the verge of purchasing the next generation aerial refueling tankers. This is going to be a decision that will cost billions of dollars and affect our service members for

decades. But I have serious concerns about the administration's decision to buy these planes from Airbus, a subsidized company that has never produced refueling tankers before. I believe we must again fight to ensure that our troops and taxpayers get the right plane.

Now I am not the only one with these concerns. Because this contest was flawed from the very beginning and the rules were changed throughout, Boeing has filed its first ever protest of the bidding process with the Government Accountability Office. The GAO is now expected to make a ruling in the next few weeks and we are all awaiting their decision. But the GAO investigation has a very narrow scope. The GAO is only allowed to determine whether the letter of the law was followed in the selection process. It cannot look at anything beyond that. So even if it is obvious that the Airbus plane costs more or it has unproven technology, or it doesn't meet the intended mission, the GAO cannot take any action to ensure that the contract is justified or in the best interests of our military, or, in fact, our national security. So I have come to the floor today because I believe that because of the GAO's limited role, Congress must look carefully at whether major Defense acquisitions are in line with the concerns of the American people. We need real answers before we move forward on this contract, and we have to demand that the administration make the case for why we should buy—American taxpayers should buy—an unproven and very costly Airbus tanker.

Let me begin by outlining why I am so concerned. When you examine both of these planes carefully as I have done, it is clear that Boeing's tanker is superior. Yet even though I have asked numerous questions in committee hearings, in letters, in face-to-face meetings in my office, no one—no one—has been able to make the case for why we should buy the Airbus tanker; not the Air Force, not the Pentagon, and not even the Commander in Chief.

Compared to Boeing's tanker, Airbus's A-330 is, we all know, much larger, less efficient, and, in fact, more expensive. It is so big that that plane cannot use hundreds of our current hangars, our ramps, or our runways around the globe. It burns more fuel, and it is going to cost billions of dollars more to maintain over the lifetime of the fleet, yet the Pentagon has not explained why Airbus's plane is the better buy.

The Air Force competition found that the Boeing 767 is more survivable than the A-330. That means it is better equipped to protect our warfighters when they are in harm's way. Yet the Pentagon has not explained why in the world it wants to give the Air Force a plane that doesn't match up. Airbus has never built a refueling tanker. Its technology is unproven, and it is proposing to do some assembly at plants

in Alabama that haven't even been built. They don't exist. Yet the Pentagon has not explained why this is a better investment than the plane built by Boeing—the same company, by the way, that has been supplying our tankers for nearly 70 years.

I also have very serious questions about whether we should give a foreign company a multibillion-dollar contract to build a major piece of our military defense. If this contract goes forward, we would be handing billions of dollars in critical research and development funding to a foreign company, owned by foreign governments, to learn how to build a military plane that is flown by American air crews. Let me say that again. If this contract goes forward, we will be handing billions of dollars in critical research in funding to a foreign company, owned by foreign governments, to learn how to build a military plane that is flown by our American air crews. I am talking about airplanes that are the backbone of our entire military strength.

These tankers we are talking about refuel planes and aircraft from every single branch of our military. As long as we control the technology to build these tankers, we control our skies and we control our own security. Yet the Pentagon has not explained why it would let all of this slip away.

Finally, Airbus has always had a leg up on the American aerospace industry because the European Union floods it with subsidies. In fact, our Government has a case pending currently before the WTO accusing Airbus of illegal—illegal—business practices. So I am astounded that our Defense Department has not been able to answer why in the world, when we have a case pending before the WTO accusing Airbus of illegal—illegal business practices, that we would turn around and give them a major Defense contract. It does not make sense.

I am not the only one asking questions. Increasingly, even experts in military contracting are demanding answers too. One of those experts is Dr. Loren Thompson who, according to even the Secretary of our Air Force, was given access to inside information on the decisionmaking process. Dr. Thompson now believes that the contract process had been less than transparent and he recently wrote an article saying that he believes the military has failed to make its case about why it chose the Airbus plane. He wrote that he too wants an explanation for why the military believes the A-330 is superior to the 767, when Airbus's military air tanker is bigger—much bigger—much heavier, untested, and unproven. As he put it last week:

The service has failed to answer even the most basic questions about how the decision was made to deny the contract to Boeing. . . . The Air Force has some explaining to do.

As I said earlier, despite all of these questions, the GAO is not allowed to dig for these answers. In fact, its role