Education:

B.A., Brigham Young University, with high honors, 1981

J.D., Georgetown Law Center, cum laude, 1984

Employment:

Law Clerk, James L. Latchum, U.S. District Court for the District of Delaware, 1984–1985

Associate, Potter Anderson & Corroon, 1985–1987

Assistant United States Attorney, U.S. Attorney's Office for the District of Delaware, 1987–1992

Associate, Morris James Hitchens & Williams, 1992–1993; Partner, 1994–1997

Vice-President and General Counsel, Corporation Service Company, 1998–2002

United States District Judge, District of Delaware, 2002–present

Selected Activities:

Member of the Board of Directors, Community Legal Aid Society, Inc., 1994–1997

Member, Delaware State Bar Association, 1984–present

Member, District of Columbia Bar Association, 1996–present

Member, American Bar Association, 1984 to early 1990s

Member, Federalist Society, 1995–1997

Adjunct professor at: Widener University School of Law, 1995–1996; 2006–present; Vanderbilt University School of Law, 2003–present; University of Pennsylvania Law School, 2005–present.

Judge Kent Jordan, of the United States District Court for the District of Delaware, was nominated to serve on the United States Court of Appeals for the Third Circuit on June 28, 2006. A hearing was held for his nomination on September 6, 2006. His nomination reported out of the Judiciary Committee with a favorable recommendation on September 26, 2006.

In 1981, Judge Jordan received his B.A. from Brigham Young University, where he graduated with high honors. In 1984, he received his J.D. from the Georgetown Law Center, where he graduated cum laude. Following law school Judge Jordan served as a law clerk to the Honorable James L. Latchum, U.S. District Judge for the District of Delaware. After his clerkship, he entered private practice as an associate at Potter Anderson & Corroon. From 1987 to 1992, he served as an Assistant United States Attorney in the U.S. Attorney's Office for the District of Delaware, where he became the office's lead attorney on civil matters and served as lead and co-counsel on a variety of criminal matters.

He then joined Morris James Hitchens & Williams as an associate in 1992, becoming a partner in 1994. While at the firm he handled intellectual property, corporate, and commercial litigation. From 1998 to 2002, he served as vice-president and general counsel for the Corporation Service Company in Wilmington, DE. In 2002, he was nominated and confirmed as a District Judge for the District of Delaware.

Judge Jordan is also a scholar who teaches as an adjunct professor at three law schools: the University of Pennsylvania, Vanderbilt University, and Widener University. Judge Jordan has spoken and published articles on intellectual property, civil procedure, advocacy, and professional responsibility. He has also contributed chapters to several legal titles, including two manuals used in the Third Circuit: Federal Appellate Procedure and Federal Civil Procedure Before Trial.

Judge Jordan has received a unanimous ''Well Qualified'' rating from the American Bar Association. He enjoys the strong support of both Delaware Senators.

Mr. SPECTER. Mr. President, in the 30 seconds remaining, I urge my colleagues to proceed to vote on the nomination of Judge Jordan and also on the pending nominations of some 13 district court judges, all of whom have been reported out favorably by the Judiciary Committee. Regrettably, the Senate does not focus as much attention on these judgeships as I think it should. The distinguished Presiding Officer has a judge on the docket from the State of Georgia. And with the enormous business pressures we have—on Iraq and on taxes and on appropriations—there is too little attention on judges. When a judge is not present on the Third Circuit, and currently there are four vacancies on that circuit, they have a judicial emergency situation. Their docket is clogged and people have to wait a long time to have their cases heard.

Similarly, if there is not a judge sitting in Georgia or in Ohio, where Senator DEWINE and Senator VOINOVICH want a nominee confirmed, people are prejudiced and disadvantaged. And from the Western District of Michigan, a Congressman was over yesterday, urging Senators to move ahead on the three pending nominations in that district. I ask that every step be taken at every level of the Senate to confirm these judges.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF KENT A. JORDAN TO BE UNITED STATES CIRCUIT JUDGE FOR THE THIRD CIRCUIT

The PRESIDING OFFICER. Under the previous order, the hour of 10:30 a.m. having arrived, the Senate will proceed to executive session for a vote on the motion to invoke cloture on the nomination of Kent Jordan, which the clerk will report.

The assistant legislative clerk read the nomination of Kent A. Jordan, of Delaware, to be United States Circuit Judge for the Third Circuit.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the nomination of Kent A. Jordan, of Delaware, to be United States Circuit Judge for the Third Circuit.

Bill Frist, Robert Bennett, Arlen Specter, Tom Coburn, Kit Bond, George Allen, Lindsey Graham, Trent Lott, Mel Martinez, Gordon Smith, Sam Brownback, Rick Santorum, Richard Burr, Hillary Clinton, Johnny Isakson, Jim DeMint.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on Executive Calendar No. 924, the nomination of Kent A. Jordan, of Delaware, to be United States Circuit Judge for the Third Circuit, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from South Carolina (Mr. GRAHAM), the Senator from Utah (Mr. HATCH), the Senator from Arizona (Mr. MCCAIN), the Senator from Missouri (Mr. TALENT), and the Senator from Virginia (Mr. WARNER).

Further, if present and voting, the Senator from Utah (Mr. HATCH) and the Senator from Virginia (Mr. WARNER) would have voted ''yea.''

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN) and the Senator from Connecticut (Mr. DODD) are necessarily absent.

The yeas and nays resulted—yeas 93, nays 0, as follows:

[Rollcall Vote No. 275 Ex.]

YEAS—93

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

NOT VOTING—7

Biden	Hatch	Warner
Dodd	McCain	
Graham	Talent	

The PRESIDING OFFICER. On this vote, the yeas are 93, nays are 0. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

There are 2 hours of debate equally divided.

The Senator from Vermont.

Mr. GREGG. Mr. President, parliamentary inquiry: Will the Senator yield for a question?

Mr. LEAHY. Without losing my right to the floor, yes.

Mr. GREGG. I was wondering if the Senator will allow us to set up a sequence of speakers after the Senator speaks.

Mr. LEAHY. I will do anything to accommodate my neighbor from New Hampshire, as he knows.

Mr. GREGG. I ask unanimous consent that at the conclusion of the statement of the Senator from Vermont, the Senator from North Dakota be recognized for 5 minutes and then that I be recognized for 15 minutes. Does the Senator from Ohio seek recognition, also?

Mr. DEWINE. I do, but not on this topic.

Mr. GREGG. It doesn't matter. Then the Senator from Ohio be recognized after I complete my remarks.

Mr. LEAHY. Mr. President, if the Senator would amend that to add the Senator from Delaware. The judge is from Delaware. I ask that Senator CARPER be recognized for up to 10 minutes following that.

Mr. GREGG. At the conclusion of the remarks of the Senator from Ohio.

Mr. LEAHY. Yes.

The PRESIDING OFFICER. Following the Senator from Vermont, the Senator from North Dakota be recognized for 5 minutes, then the Senator from New Hampshire for 15 minutes, then the Senator from Ohio for 15 minutes, and the Senator from Delaware for 10 minutes. Is there objection?

Mr. LEAHY. I have no objection.

Mr. GREGG. I thank the Senator from Vermont for his courtesy.

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

Mr. LEAHY. Mr. President, I am pleased the Senate finally has an opportunity to consider the nomination of Kent Jordan of Delaware for a lifetime appointment to the U.S. Court of Appeals for the Third Circuit. Judge Jordan is a well-qualified nominee with the support of both home State Democratic Senators, as well as that of the chairman of the Judiciary Committee, whose State is within the Third Circuit. I support this nomination, and I will vote to confirm him.

I regret that the Republican leadership chose to eschew bipartisan discussion of nominations and unilaterally filed an unnecessary cloture vote on Judge Jordan's nomination, especially after we worked so hard to expedite it in September. We could very easily have voted on this in September instead of having this folderol of urgency now. Most of us wanted to vote on this weeks ago, and I am not sure what political last gasp is involved in saying we have to have cloture. That was never necessary.

I wish, instead, the leadership had followed the customary practice in the Senate of the Republican and Democratic leaders to have sat down with the chairman and ranking member of the Judiciary Committee and worked out a process to conclude the consideration of judicial nominations for this session. Had they done so, we could have capitalized on the hard work done by the chairman and the Judiciary Democrats to report consensus nominations. Instead—and I mention this to those from States such as Georgia and elsewhere—this is the only judicial nomination the Republican leadership has scheduled for consideration in months.

I mention this for my colleagues who might be from States that have some of these judicial nominees—apparently those from those States do not particularly care. I mention it in case anybody is reading the RECORD later on. I was going to suggest a way to get some of them, but there does not seem to be an interest in it, so I will not.

What they have left unexplained is why they refuse to go forward with the President's nomination of Judge Janet Neff from Michigan. The Federal court serving the Western District of Michigan has three Federal trial court vacancies that are judicial emergency vacancies three in one district. The Senators from Michigan have worked with the White House on the President's nomination of three nominees to fill these emergency vacancies. The Judiciary Committee has proceeded unanimously on all three.

Working with Chairman SPECTER, the Democratic members of the committee cooperated to expedite their consideration.

On September 16 we held a confirmation hearing for those three nominees on an expedited basis. Regrettably, the President waited until July to make these nominations. Had he acted sooner, as some of us suggested earlier this year, we would not be in this situation. From the beginning I have urged the President to work with us on consensus nominations, and I have worked hard to proceed. I continue to do so even at this late date in the session, in spite of the pocket filibusters employed by Republicans to stall and block more than 60 of President Clinton's qualified judicial nominees.

Democrats cooperated to expedite consideration of a number of matters and reported the three judicial nominees to fill the emergency vacancies in the Western District of Michigan on September 29. Regrettably the White House, Republican leadership, and objections by Republican Senators continued to undermine this process. Instead of focusing on consensus nominees, the President sent back to the Senate in September and, again, following the November election, highly controversial nominees who had been returned to the White House in the hope that the President would work with us on a bipartisan basis.

We have been accommodating, and we will continue to be. I urge all Democrats to vote for confirmation of Judge Jordan, as I will. But neither the Judiciary Committee nor the Senate should be a rubberstamp for this President or any President. We should be taking our constitutional responsibility to advise and consent seriously. These are the only lifetime appointments in the Federal Government, and they will have an enormous impact on the lives, the rights, and future of Americans.

We were accommodating when Judge Jordan was pending before the Judiciary Committee. I knew this nomination was from Chairman SPECTER's circuit, and I cooperated with his request for a special executive business meeting. We came to the meeting and made sure we had a quorum, even though the meeting was out of the normal course.

The chairman said that the meeting would be held to expedite consideration of noncontroversial nominees. I agreed to let the majority meet to hold over the nomination of Judge Jordan in order to expedite its consideration at our next meeting. In order to be more accommodating, I went further and continued to meet so that nominees of interest to Senator GRASSLEY and Senator DEWINE could be moved forward in the process as well.

The Democratic Senators on the Judiciary Committee and our staffs worked especially hard as time ran down in this Congress to be accommodating on judicial nominations. The chairman held four nomination hearings in September. Three of these hearings were for four nominees, an extraordinary number in one hearing, and the fourth was an unprecedented hearing for two nominees who had received ''not qualified'' ratings from the American Bar Association. This was a faster pace than is traditional for the committee so late in the session, particularly in an election year. It was a much faster pace than is ideal for careful consideration of lifetime appointments to the Nation's courts. But we nonetheless cleared nominees at this pace to be accommodating and to keep the nominations moving forward.

Sadly, rather than meet to work out a process to conclude the consideration of judicial nominations for this session, the Republican leadership has apparently made the unilateral decision to stall certain of these nominations, including those for the judicial emergencies in the Western District of Michigan, and particularly the President's nomination of Judge Janet Neff.

This fall, an editorial in the Richmond Times-Dispatch entitled ''No Vacancies,'' highlighted the administration's counterproductive approach to judicial nominations. The editorial criticized the administration before the November elections and before the President renominated those controversial choices, for failing to turn vacancies into judges and instead pursuing political fights. According to the Richmond Times-Dispatch:

> The president erred by renominating . . . [Haynes] and may be squandering his opportunity to fill numerous other vacancies with judges of right reason.

The Richmond Times-Dispatch focused on the renomination of William James Haynes II to the Fourth Circuit. Of course Mr. Haynes has yet to fulfill the pledge he made to me under oath

at his hearing to supply the materials he discussed in his opening statement regarding his role in developing the legal justifications and policies having to do with torture, detention and other matters.

The Richmond Times-Dispatch editorial could just as easily have been written about Judge Terrence Boyle, whom the President also renominated again to a seat on the Fourth Circuit. He did so despite the fact that as a sitting U.S. district judge and while a circuit court nominee, the President's nominee, Judge Boyle, ruled on multiple cases involving corporations in which he held investments. The President should have heeded the call of the North Carolina Police Benevolent Association or the North Carolina Troopers Association or the Police Benevolent Associations themselves from South Carolina and Virginia or the National Association of Police Organizations or the Professional Firefighters and Paramedics of North Carolina, as well as the advice of our former colleague, Senator John Edwards, to withdraw this ill-advised nomination and not renominate him. Law enforcement officers from North Carolina and across the country oppose the nomination. Civil rights groups oppose the nomination. Those knowledgeable and respectful of judicial ethics oppose this nomination. This nomination has been pending on the floor calendar in a Republican-controlled Senate for more than a year after being forced out of the committee on a solid party-line vote. The Senate actually did the President a favor by returning this nomination to the White House before the summer recess and again before the election. Republican Senators tell me they don't want to vote on this nomination, but the White House keeps sending it back up.

The President also squandered an opportunity to fill Idaho's vacancy in the Ninth Circuit by renominating William Gerry Myers III for that seat again in September and again after the November elections. This is another administration insider and lobbyist whose record has raised very serious questions about his ability to be a fair and impartial judge. I opposed this nomination when it was before the Judiciary Committee in March 2005. Actually, this was a nomination which the so-called Gang of 14 expressly listed as someone for whom they made no commitment to vote for cloture, and with good reason.

Mr. Myers' record as Solicitor General for the Department of the Interior suggests that he was part of a culture of corruption documented in the testimony of the Interior Department's inspector general, Earl Devaney, at a hearing of the House Government Reform Subcommittee on Energy. Listen to what the Inspector General in the Bush administration says about this Bush nominee. Mr. Devaney testified about a ''culture of managerial irresponsibility and lack of accountability'' at the upper levels of the Interior Department in which, ''[s]imply stated, short of a crime, anything goes at the highest levels of the Department of the Interior.'' He also testified, ''I have observed one instance after another when the good work of my office has been disregarded by the Department. Ethics failures on the part of senior Department officials—taking the form of the appearances of impropriety, favoritism and bias—have been routinely dismissed with a promise 'not to do it again.''' Apparently, reading this record, it was done again and again.

While Mr. Myers' anti-environmental record is reason enough to oppose his confirmation, his connection to the ''culture of managerial irresponsibility and lack of accountability'' raises further concerns. But these are the kinds of judges who keep getting sent back to the White House when even a Republican-controlled Senate won't bring them up for a vote. You would think somebody at the White House would be listening when they say: We are trying to send you a signal. Don't keep sending them back.

In particular, questions remain about his role in authorizing a lawyer who worked for him, Bob Comer, to arrange a sweetheart settlement agreement for a politically well-connected rancher, Frank Robbins. Mr. Comer was found, in an investigation by the Department of the Interior's inspector general, to have been responsible for arranging the deal. Documents have come to light recently showing that Mr. Myers had been given materials about the deal, which certainly undermine his assertions made under oath that he was merely misled by Mr. Comer. If anyone sought to proceed to this nomination, then we would want to know a lot more about these new documents, and we would need to explore any connections to the lobbying scandals associated with the Interior Department and Republican lobbyist Jack Abramoff. Recent reports in the Denver Post raise additional questions about the thoroughness of what Mr. Myers told us since the report that Mr. Myers and Mr. Abramoff attended at least one party together has gone unrefuted and unexplained.

So it is particularly troubling to see Mr. Myers be nominated because the President squandered yet another opportunity to fill a vacancy. I had suggested he renominate Norman Randy Smith, a Republican nominee, for the vacancy created by the retirement of Judge Thomas Nelson from Idaho. Instead, the President has again nominated Judge Smith, but not to this seat. He has nominated him to a California seat of the Ninth Circuit, effectively stealing California's seat. That is wrong. I support the California Senators in their opposition to this. I had urged President Bush to resolve this impasse and turn Idaho's vacancy into a judge by withdrawing the controversial and tainted Myers nomination—tainted Myers nomination—and instead nominate Judge Smith for the Idaho vacancy to which he could be easily confirmed. Alternatively, he could have renominated them both but merely switched the vacancies for which they were nominated, thereby allowing the Smith nomination an opportunity to proceed.

In addition, the President has renominated, again, Michael Wallace to the vacant seat on the Fifth Circuit even though he received the first ABA rating of unanimously ''not qualified'' that I have seen for a circuit court nominee in a quarter of a century, from Republican and Democratic administrations. That in itself should have been enough of an embarrassment not to send the name back, especially when a Republican-controlled Senate did not bring it forth. Committee proceedings on this nomination detailed the significant concern raised by numerous jurists around the country regarding Mr. Wallace's judicial temperament, his lack of commitment to equal justice to the poor and minorities, his lack of tolerance, and his closemindedness. It detailed concerns from judges and lawyers that Mr. Wallace may not follow the law and is driven by his ''personal agenda.''

Of course, the troubling issues raised in the ABA's testimony echo significant concerns about Mr. Wallace's record on civil rights, his opposition to the Voting Rights Act, his support for tax exemptions for Bob Jones University, his opposition to prison safety regulations, and his attempt, as President Reagan's director of the board of the Legal Services Corporation, to undermine efforts to provide legal services to low-income clients. Don't they understand that even a rubberstamp Republican Senate which has gone along with just about everything this Bush administration has done had something in mind when they sent this nomination back to the White House? Instead, the White House sent it back.

Months ago—months—ago before the last recess, I was urging Senate action on nominees such as the Michigan District Court nominees and Judge Jordan, whom we have before us now. What little progress we might have made has been undone by some on the Republican side. I have been here 32 years. I have never seen anything with either Republican leadership or Democratic leadership with a judge like this who could have been easily passed—Democrats and Republicans supported him—months ago, and here we are stalled because nobody can figure out what to do the last few days of a session. Suddenly, it is like, My God, we have to have a cloture vote on him. We could have had 30 hours of debate afterwards, which I said let's not do, and we have a unanimous consent agreement that we would not. But to have gotten to a cloture vote on somebody who would have passed on a bed check vote months ago—well, if this is theater, it is theater of the absurd. If this is theater, it would close after opening night on Broadway or anywhere else.

This goes beyond a farce. And it is particularly ironic that after months of Republicans repeating a new mantra that every one of the President's nominees, whether qualified or not, whether engaged in conflicts of interest or not, whether found by their own peers to be not qualified or not, whether they are supported by home State senators or not, is entitled to a swift up-or-down vote, after we heard this over and over—guess what—it was Republican objections that stalled more than a dozen judicial nominees.

After the last working session in October, I learned that several Republicans were objecting to Senate votes on some of President Bush's own judicial nominees. This is theater of the absurd. You had Republicans on the campaign trail saying: Oh, my, God, those Democrats are holding up President Bush's poor nominees for these highly paid lifetime appointments. They are holding them up. And guess what happened. All these nominees of President Bush, we said: Fine, let's just pass them. We were told: Oh, can't do it. Can't do it because we have Republicans who put holds on them. Talk about having it both ways. Republicans hold up the judges so they can go on the campaign trail and say: Oh these terrible Democrats. They are holding up our judges. Oh, my heart cries for them.

In fact, according to press accounts, Senator BROWNBACK had placed a hold on Judge Neff's nomination even though he raised no objection to the nomination when she was unanimously reported out of the Judiciary Committee. Later, without going through the committee, Senator BROWNBACK sent questions to Judge Neff about her attendance at a commitment ceremony held by some family friends several years ago in Massachusetts. Senator BROWNBACK spoke of these matters and his concerns on one of the Sunday morning talk shows.

So where is the consultation about this with the leaders of the committee? Where is the cooperation? Where is the working together? Where is the attempt to be uniters and not dividers? Where is the wonderful statement by the President, after he got shellacked in the last election, saying: We are going to work together. Where is the explanation why the Republican leadership has chosen not to proceed with the Neff nomination to a judicial emergency vacancy? Can it really be that her attendance at a commitment ceremony of a family friend failed some Republican litmus test of ideological purity, that her lifetime of achievement and qualifications are to be ignored and that her nomination is to be pocket-filibustered by Republicans like the 60 they pocket-filibustered of President Clinton's? Oh, goodness gracious.

The Republican approach to nominations, of using nominations to score political points rather than filling vacancies and administering justice, has led to a dire situation in the Western District of Michigan. Judge Robert Holmes Bell, Chief Judge of the Western District, wrote to me and to others about the situation in that district where several judges on senior status—one is over 90 years old—continue to carry heavy caseloads to ensure justice is administered in that district. In fact, Judge Bell is the only active judge. If it had not been for Republicans blocking President Bush's nominations, those vacancies would be filled.

Of course, this is not the first time Republicans objected to an up-or-down vote on judicial nominees. They objected and stopped up-or-down votes on more than 60 of President Clinton's judicial nominees. Last year, the President's nomination of Harriet Miers to a vacancy on the Supreme Court was stalled and withdrawn, not because a single Democrat in this body objected but because Republicans objected. Republicans questioned her qualifications, demanded answers about her work in the White House and her legal philosophy and, although Democrats said go ahead and give her a hearing, they then defeated her nomination without allowing a hearing.

With regard to judicial nominations, I do want to acknowledge the kind words of the majority leader, who noted before the October recess that we made ''tremendous progress'' in confirming qualified judicial nominees. By Senator FRIST's count, the Senate ''has confirmed 88 percent of President Bush's judicial nominees, giving him the highest confirmation rate since President Reagan.'' He calculates that ''95 percent of all judgeships are filled, including more than 92 percent of all circuit court judgeships and more than 95 percent of all district court judgeships.'' He notes that the Senate has confirmed ''[n]early 160 nominees'' for judgeships under the 46 months of his leadership—160 in just 46 months. He leaves out the fact that 100 of the President's judicial nominees were confirmed during 17 months when the Democrats were in charge. Senator Daschle was leader, I was chairman of the committee, and ironically—I guess it is something that got overlooked because it doesn't fit in the campaign slogans—President Bush's judges moved much faster under Democratic leadership than they have under Republican leadership.

Likewise, Chairman SPECTER acknowledged before the recess that Democrats on the Judiciary Committee in the Senate have been extremely accommodating. I hope he doesn't get in trouble for that because his statements sharply diverged from the vitriolic attack the Republican National Committee made on me, personally. It went way beyond campaign rhetoric to flatout lies.

This year we have confirmed 31 judicial nominees so far. That far surpasses the total number of judges confirmed in the 1996 Congressional session, when Republicans controlled the Senate and pocket filibustered President Clinton's nominees. In that session, Republicans would not confirm a single appellate court judge—not one—and moved forward on only 17 district court judges all session. That was the only session of the Senate I can remember, in my 32 years, in which the Senate simply refused to consider appellate court nominations. That was part of their pocket filibuster strategy to stall and maintain vacancies so that a Republican President could pack the courts and tilt them decidedly to the right. In confirming eight circuit court judges so far this year, we have already confirmed more circuit judges than in 1996, 1997, 1999, and 2000.

We could have accomplished a lot more this year if the White House had sent over consensus nominations earlier in the year. Regrettably the administration concentrated on a few highly controversial nominees and delayed until recently sending other nominations and thereby prevented us from having the time to do any meaningful review. As I said before, we could have done the Jordan nomination before us now back in September instead of having this high drama.

If I were at all cynical—and we Vermonters are not, by nature—I would almost think this vote had been set up to distract the people from the fact that the Senate and House leadership have failed to figure out a way to get us out of this morass, after they failed to follow the law and pass a budget this year. They broke the law, didn't follow it, to pass a budget this year, even though they control both bodies of the Congress. Then they failed to pass our appropriations bills by the end of September, even though they are required to do so. Could it be that this nomination, this high drama of something that is going to pass unanimously, was brought up so maybe the press would be fooled into thinking that this was so important it might distract them from the fiasco from the fiscal train wreck they have got us into?

Even though this Republican controlled Congress has sent back a few of the most controversial nominations, the administration keeps sending them back. By contrast, there are six judicial emergencies still that have no nominee at all. Nor has President Bush fulfilled his solemn pledge to make a nomination for every vacancy within 180 days. Of the vacancies currently without a nominee, seven have been vacant for more than 180 days. An additional 14 of the pending nominees were nominated only after their vacancies had occurred for more than 180 days.

I want to note, again, so nobody will think that we even had to be taking the time here now: I support the confirmation of Judge Jordan. I helped expedite his consideration by the committee so we could vote on him nearly 3 months ago, in September. But we didn't in September. Of course, we didn't in October. We didn't in November. Here we are in December. But even

with his confirmation, only 32 judicial nominees will have been confirmed in the last 12 months. Contrast that to the 17 months when Democrats were in charge of this body and I was chairman when we confirmed 100 judges. In the last two years of Republican control, with a Republican President and Republican Senate, we confirmed half of that, just 53 nominees. Think how much higher it could have been with some cooperation.

We have been accommodating, and we will continue to be, as we vote for confirmation of Judge Jordan today. But neither the Judiciary Committee nor the Senate should be a rubberstamp for the President. In case anybody is wondering, the Senate Judiciary Committee will not be a rubberstamp for this President or any President. Our success in this process depends on the White House sending consensus nominees, as opposed to the highly controversial nominees it sent the Senate repeatedly. I was encouraged by President Bush's pledge after the election to work with Congress in a bipartisan and cooperative way. But I was disappointed barely a week later when he broke that pledge and renominated a slate of his most controversial nominees who had failed to win confirmation, even under a Republican-controlled Senate. If they could not win confirmation when the Republicans were in control, my guess—I can't speak for other Senators—but my guess, with a Democratic chairman and Democratic-controlled Senate, they probably will not win confirmation there either. If they weren't good enough for the Republicans, they probably won't be good enough for the Democrats.

I am hopeful we can find a better approach in the 110th Congress. It starts with the President. If the President would consult with us and work with us to send consensus picks instead of failed controversial nominations for important lifetime appointments, we can make good progress filling vacancies.

We owe it to the American people. The American people do not want nominations to be about partisan politics but about Government responsibility to provide justice. The American people expect the Federal courts to be fair forums, where justice is dispensed without favor to anybody based on their political philosophy.

These are the only lifetime appointments in our entire Government. They matter a great deal to our future. Most of them will serve long after most of us in the Senate have left office; certainly after the President who nominates them has left office. I said over and over again, the Federal judiciary should not be an arm of the Democratic Party nor the Republican Party. Otherwise we lose all faith in the independence of the judiciary. Just as I have opposed those who call for the impeachment of judges when they disagree with a particular opinion or give speeches seemingly condoning violence against judges and their families, I, also, do not want to see a Federal judiciary politicized. I will continue, in the 110th Congress, to work with Senators from both sides of the aisle to ensure that the Federal judiciary remains independent and able to provide justice to all Americans.

I congratulate Judge Jordan and his family because I know he will be confirmed today.

I reserve the remainder of my time and I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

HONORING SENATORIAL SERVICE

PAUL SARBANES

Mr. CONRAD. Mr. President, I rise today to pay tribute to one of the Senate's finest Members, Senator PAUL SARBANES, who is retiring after 30 years of service in this Chamber. Senator SARBANES has served this Senate, his State, and our country with dignity, wit, and uncommon wisdom. He is simply one of the smartest, most principled people I have ever known. He is, quite simply, a class act.

PAUL SARBANES has focused his energies on governance and effective legislating. This thoughtful approach has served him well, served his State well, and served this Chamber well. PAUL SARBANES never lost an election, and he is the longest serving Senator in the history of the State of Maryland.

In the Senate, PAUL SARBANES served with great distinction as chairman and ranking member of the Banking and Joint Economic Committees and has long provided wise counsel on the Foreign Relations Committee.

At the Banking Committee, he has been relentless in protecting consumers from unscrupulous financial acts. When the country was hit by scandals in the Enron and WorldCom cases, PAUL SARBANES acted to protect against further abuse and the Sarbanes-Oxley Act is the result. That is an act that has stopped further abuse.

PAUL SARBANES also fought for affordable housing, for adequate public transportation, for transparency at the Federal Reserve. In debating former Fed Chairmen and the current one, he has never let central bankers forget that they must pursue a dual mandate, with jobs for Americans on an equal footing with fighting inflation.

It has been my honor and my privilege to serve with Senator SARBANES on the Budget Committee. Few can match his understanding of economics and the interaction between the budget and the economy. His insightful and tenacious questioning, his even temper, and his humor have made being his colleague on the Budget Committee both rewarding and a pleasure.

My favorite story about PAUL SARBANES is from his youth. PAUL SARBANES was an outstanding athlete. He was a great baseball player and a great basketball player. In fact, he was so good in baseball that he was chosen as a Maryland All Star. He was chosen to play shortstop on that team. When he showed up for the first practice, the manager directed him to second base. PAUL SARBARNES was a little surprised by that because he had been chosen to play shortstop. But he went out and played second base. He thought there might be some mistake. The next day, he came to the next practice and was again directed by the manager to play second base. At this point, Senator SARBANES thought he should go to the manager and inquire why—since he had been chosen to play shortstop—he was playing second base. The manager looked him in the eye and said, ''Sarbanes, Kaline will be playing shortstop.'' Of course, the Kaline was Al Kaline, who became a Hall of Fame baseball player.

That is some measure of the extraordinary athletic talent that PAUL SARBARNES had. It was not his athletic talent that so distinguished him in this body; it was his remarkable academic talent, his remarkable ability to deal with others.

I think in my time in the Senate I have never dealt with a person of greater wisdom than PAUL SARBARNES.

I wish Senator SARBANES the very best in his retirement and whatever endeavors he will pursue. His wife, too, has become a special favorite to our family—so bright, so talented, and such a good partner with PAUL SARBARNES. I know they are deeply proud that their son has been elected to the Congress of the United States to represent a district in Maryland.

PAUL SARBARNES has been a great colleague and a very dear friend to me. I will miss him and his service on the Budget Committee and in the Senate.

I thank the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized for 15 minutes.

Mr. GREGG. I thank the Chair.

EXTENDERS

Mr. GREGG. Mr. President, I rise to discuss what is the last pending major piece of business relative to this Congress and is headed toward the Senate from the House, something called the extenders bill.

To put this in the proper context, there are a number of tax initiatives which are going to lapse this year and need to be extended—things such as the R&D tax credit, such as the deduction which teachers can take when they buy materials for their classrooms. Teachers—especially elementary teachers—seem to do a lot of that. They deserve that recognition; also, things such as tuition tax credit. These are all extenders which should occur. Were they to occur in the proper order, they might cost as much as $12 billion. However, the bill that is headed toward us doesn't cost $12 billion; it is going to cost $39.5 billion. At least that is what we think it is going to cost. We haven't had it finally scored. But that is what we believe is a reasonable number to put on that.

That will be added to the deficit. It will be at least $17 billion over what is

known as pay-go, which is a mechanism that disciplines tax cuts. It doesn't discipline spending, regrettably. I hope we can restructure it, and then I might be a supporter of it. But it is $17 billion over what is known as the pay-go baseline. This represents $39 billion of funding which will be added to the debt. That is incredible as the last act of Congress. It will actually be, arguably—depending on how you define the Part D premium exercise, which added trillions of dollars in the outyear debt—either the largest or the second largest budget buster passed by this Congress, $39 billion. It has in it a large amount of items which have nothing to do with extending taxes and has a lot to do with personal interests of various special interest groups around this country who have the capacity to get things put in bills.

Probably the most significant one is conversion of a program called the Abandoned Mine Land Program which basically will create a new $4 billion cost to the American taxpayer to pay for health insurance of mine workers and former mine workers which should have been paid for by the coal companies. In other words, it is a direct transfer of payment from the corporate coal companies' obligations to support the health care of these miners to the American taxpayer. And it is a directed program, a mandatory program, not a discretionary program. So it basically cannot be reviewed or adjusted in the outyears.

It is probably one of the most egregious things we will do in this Congress in the area of abandoning fiscal discipline and raiding the taxpayers' pocketbooks for the benefit of a small group of people and corporations.

It, also, includes something called the doctors' fix. It is appropriate that we correct the amount of money that doctors are reimbursed for under the Medicare Act. There is a 5-percent doctor reimbursement. It is not fair to doctors to be asked to bear the burden of the expansion of Medicare costs, and it should be corrected.

But the understanding always was—at least I thought it was—I guess I am naive—that it was going to be paid for with real dollars. That wasn't exactly what was said here. There are some real dollars being used, but there are real dollars that do not have anything to do with the issue. They are taking something called the stabilization fund and applying it to doctors. That pays for some of it. That arguably is real dollars which should be used in this event, but as a matter of policy, you can't fight it from a budget standpoint. It is real dollars and bad policy.

But there is another group of dollars being used that does not even exist and is being claimed as part of the payment. They are going to correct a hole in next year's doctors' fix which will double next year's fix; take that money that doesn't exist and claim they are taking that money to pay off the doctors' fix this year. It is an accounting gimmick of extraordinary brazenness, which if you did it in the corporate world, you would go to jail. There wouldn't be any question about it. There would be a clear-cut jail sentence tied to this one if this were a corporate gimmick used by a corporation and put on the shareholders or the investors in your company as something that was appropriate. It is an outrage of the first order on the American taxpayer and our children, because who pays for this? Our children pay for it. That is what happens.

The bill is laden with earmarks, where this group or that group or that one—the District of Columbia gets $150 million, the State of Tennessee gets $35 million, and the State of Nevada gets $4 million. I don't know how this one got in here: The Music Writers of America are going to get $3 million. The music writers will get $3 million from the taxpayers and put on the debt. By our standards around here, it wouldn't even make an asterisk. But it is what this represents that is so outrageous.

The rum excise revenue sharing with Puerto Rico, $184 million; special depreciation for ethanol plants.

I don't think there has ever been a financial bill which has come through this body that didn't have something for ethanol. Ethanol is a great idea. I am for it now. I used to be suspect about it. But it is such a vertical, integrated subsidy. Why do we have to keep throwing subsidy after subsidy into it? In fact, not happy enough with that little exercise, they also had to extend the tariff on ethanol that comes into the country from international producers so that the Northeast, which can't get the ethanol from the Midwest because it can't be shipped through the pipelines because ethanol can't be shipped through the pipelines because it bonds with water and the pipelines will not work—the Northeast, which can only get it shipped efficiently and cost effectively, say, from Brazil and have it shipped in by boat, has to pay a huge tariff on that—54 cents a gallon, which makes it economically unfeasible, even though it is an alternative fuel source that should be used throughout our country. And granted, we would like to have it produced in America, but I would rather be buying ethanol from Brazil than oil from some of our friends in the Middle East, such as Iran. Yet this makes it virtually impossible to do that. It is good policy, I say with great irony and sarcasm. Of course, it has nothing do with tax extenders.

Then there are serious policy implications. For example, it extends the sales tax deduction, which is a policy of essentially saying to high-tax States: You should increase your taxes on your people at the expense of the Federal Treasury. The sales tax deduction is nothing more than a revenue sharing for the Federal Government, where the Federal government says to a State: We will give you a deduction for increasing your taxes and the Federal taxes will then go up for everybody else to pay for that deduction. There are a lot of States that don't have a sales tax. There is no reason they should be penalized in this way. There is no reason people in New Hampshire should have to pay sales tax to subsidize a high sales tax in the States of New York or Texas or California. It doesn't make any sense, from a policy standpoint.

This is not distributed in a very equitable way. The only people who can take advantage of this are the itemizers. Itemizers, by definition, usually earn more than $60,000, at about the breaking point where you start to itemize your tax deductions. Basically, low-income people who pay a sales tax will see their sales taxes go up because States will want to raise them in order to claim their deduction, and low-income people will now have to pay more in sales tax and not be able to deduct it; whereas, high-income people in those States deduct it. It doesn't make any sense policywise or from a tax standpoint. It is just one important effort by one group of States that want to get this deduction put in place to take advantage of a bill coming through here.

The bill, as I said, is arguably the biggest budget buster ever brought forward by the Republican Congress. That is ironic in and of itself, isn't it? That is pretty ironic.

The way it is being brought forward is interesting. It is being brought forward in a manner which will make it extraordinarily difficult. This is being done by the Republican leadership for the Republican membership in a way that makes it extraordinarily difficult for anyone to attack the bill at any point and raise any of the issues which I just raised. In other words, if I wanted to address this deduction of $35 million for Tennessee or if I wanted to address the music writers item, I will not be able to do that. That option is not going to be allowed to me on a traditional vote nor on a motion to strike. I probably would lose those motions, but that is not going to be available to knock those earmarks out.

If I wanted to raise the policy arguments on the doctors' fix, the fact that you have this unbelievable accounting mechanism used to pay for it, I am not going to be able to do that as Budget chairman. That will be denied. The Republican leadership is denying Republican membership the capacity to address these serious fiscal issues in this bill, including the fact it is $39 billion added to the Federal debt. It is going to be brought over in a manner which I have never seen happen before, probably because it is the biggest budget buster in the history of our country passed by the Republican Congress. They do not want to have anybody highlighting it but are sending it over as a message from the House—not as a bill but as a message from the House, which dramatically limits the ability

to attack it or raise issues by it. ''Tax'' maybe is the wrong term. Then they are going to fill the tree so no amendments can be made. Then they are going to have the final vote with motions to concur with the House message. It is obvious they have the votes to do this. This bill has so much in it for so many different little folks and issues around here that they have racked up the vote count to the point where they can accomplish it. Well over 60 votes would be for this bill. The votes are there. They can do it. That is the way the majority works.

But we have to ask this question. The American people took the reins of government away from the Republican Party, the Republican Congress, in this last election. They did so in large part because they were tired of our hypocrisy as a party on the issue of fiscal responsibility. It would appear their concerns are justified. It is true that our colleagues on the other side of the aisle will probably be worse at fiscal management than we are. We have shown it to be in our nature to spend money. If you add up all the things they talk about in their campaigns, they will spend a lot, but at least they will not be hypocritical, going to the American people and saying: We are the party of fiscal responsibility.

We have to ask how we as a party got to this point where we have a leadership which is going to ram down the throats of our party the biggest budget buster in the history of the Congress under Republican leadership.

Anyway, the American people figured it out. I am sorry we haven't figured it out yet.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio is recognized for 15 minutes.

HONORING OUR ARMED FORCES

FIRST SERGEANT CHARLES M.KING

Mr. DEWINE. Mr. President, I rise today to pay tribute to a dedicated and decorated Ohio soldier, Army 1SG Charles Monroe King from Cleveland. 1SG King was killed in Iraq by a roadside bomb on October 14, 2006, during a convoy mission to send supplies to Baghdad. He was 48 years old at the time of his death.

1SG King's last mission captures the essential character and selflessness of this man. A 19-year veteran of the Army, Charles was the senior officer on a resupply mission near Baghdad. According to others, Charles did not have to accompany the convoy, but, true to form, Charles went to offer his experience to the younger soldiers on the mission.

His friend and fellow soldier, Captain Jon Schaeffer, said this about what happened:

> He did not have to go on that resupply mission, but Sergeant King loved his soldiers. He would not let them do anything that he would not do, so he was right there with them.

His heartbroken fiancée, Dana Canedy, added:

> He said he could not, in good faith, send his soldiers on a mission unless he did it himself. He made sure that each one of his soldiers took leave before he would take his leave.

That selflessness—that willingness to always put his men first—is a measure of Charles' leadership and courage. That Saturday in October, America lost a true hero.

A career soldier, Charles was scheduled to return home last month. He was a member of a unit from Fort Hood, TX, that was deployed to Iraq last November. As a veteran of the first Gulf War and one of the Army's very best soldiers, Charles was highly decorated. His numerous awards include the Bronze Star, the Meritorious Service Medal, the Army Commendation Medal, the Army Achievement Medal, and the Army Valorous Unit Award. This list of awards, impressive as it is, tells only part of the story of this remarkable man.

As his sister Gail said, ''My brother was very humble about his military experience and all the things he had accomplished.'' Charles was born and raised in the Cleveland neighborhood of Lee-Miles, where his parents Charlie and Gladys still live.

Friends and family remember Charles as a soft-spoken, helpful little boy, who could be counted on to do more than his share of the work.

His former church Pastor, Vern Miller, recalled the day he asked for volunteers to build a three-foot concrete block wall for a needy neighbor. Charles was only a child, but he already had that natural impulse to help and to serve. Pastor Miller said that ''Chuckie was the first to arrive. He was ready to work. Of course, he was too little to carry the heavy blocks, but he brought the workers water all day.'' In that giving little boy, we can see clearly the loving man he would become.

Charles was also a person with wide-ranging interests and passions. He was especially interested in art. When Charles was about 13, his mother enrolled him and his sister in an art class at a nearby community college. Gail said that, while she ''failed miserably,'' Charles fell in love with art.

Upon finishing high school, Charles attended the heralded Art Institute of Chicago. Upon graduation in 1983, he worked as a fashion ad illustrator in Alabama. Known as a hard worker with a meticulous eye for detail, Charles created illustrations for advertisements, as well as for news stories.

His artistic talent continued to play a significant role in Charles' life long after he traded in a civilian career in art for a life of military service. While serving in the military, Charles became fascinated with the history of the 761st Tank Battalion, an African American unit that served in World War II. Ultimately Charles was so inspired that he drew a collection of illustrations of the unit in battle. His collection was put on display at the Pentagon in 1998, as part of the Black History Month celebration. More of his work is now on exhibit at military museums at Fort Lewis, WA, and Fort Knox, TN.

Charles King could have lived comfortably as a professional artist, but his strong sense of duty led him to enlist in the Army. ''My brother was very much into service and serving others, and that was the driving force [for joining the military],'' Gail said.

Charles joined the Army in 1987 and married shortly after. He soon became a dad, when daughter Christina was born. She was the light of her father's life.

While in the military, Charles served honorably in Iraq from 1990 to 1991, as part of Operation Desert Storm. Later, he was able to continue his education, attending Cuyahoga Community College and receiving an associates degree from Chamberlain Junior College in Boston.

Charles was remembered by his fellow soldiers as the consummate professional. Captain Schaeffer remembers how the normally soft spoken and gentle man was also a very capable leader, able to guide his troops in times of chaos. He said that ''we all learned one thing: When Sergeant King yelled, you moved. He only yelled when there was good reason.''

Before his last deployment to Iraq, Charles became engaged to Dana Canedy, a Pulitzer-prize winning journalist who worked for the Cleveland Plain Dealer and now serves as an editor at the New York Times. While Charles was in Iraq this last year, Dana gave birth to their son, Jordan. Charles was ecstatic.

During a 2 week leave in September, he got to see his 6 month-old son for what would, tragically, be the first and the last time. He could hardly put his baby boy down.

Although it was terribly difficult to be separated from his family, Charles came up with a unique and heartwarming way to communicate to his infant son Jordan. Miles away, Charles began keeping a journal addressed to Jordan. The journal, which reached 200 pages, was a collection of everything from short stories from his childhood to excerpts of his time as an artist. Mostly though, the journal laid out detailed guidelines and fatherly advice about what Jordan would need to know growing up.

Dana said this about that journal:

> It was therapy for [Charles]. He wanted his son to know everything he could tell him. Everything from his favorite Bible verses, why he wanted to have a baby, why he wanted to be a soldier, and how to treat women.

Leafing through the pages, there are instructions for everything from how to deal with disappointment to letting his son know it was OK for boys to cry. As Dana said, ''Charles was this big, muscular guy, but he was like a big pussycat.'' Charles ended his journal to