

on the Courts of Appeals more than doubled, increasing from 16 to 33. That is what we inherited. But in one year of Democratic control, and despite 45 additional vacancies caused largely by the retirements of many past Republican appointees, we have reduced the number of district and circuit court vacancies.

Vacancies continue to exist on the Court of Appeals, in particular, because a Republican Senate majority was not willing to hold hearings or vote on more than half—56 percent—of President Clinton's circuit nominees in 1999 and 2000, and was not willing to confirm a single circuit judge during the entire 1996 session. Republicans caused the circuit vacancy crisis, and it has taken a tremendous effort to evaluate and have hearings for 18 circuit court nominees in our first year.

In the meantime, Republicans have been unfairly critical that not every nominee has yet had a hearing or been confirmed. Rather than commend our efforts to do twice as much as they, their criticism is that we have yet to conclude consideration of everyone simultaneously. In less than 13 months we have already confirmed 13 of President Bush's nominees to the Courts of Appeals, and one more is awaiting a vote by the full Senate. They confirmed 46 circuit court nominees in 76 months. Without the benefit of presidential consultation of the Senate before nomination—as Republicans did in recent past years, without having had the luxury of taking two, three and sometimes four years before voting on a nominee, we have already achieved a confirmation rate of over 40 percent in our first year. With some cooperation in the fall from the Administration and from the Republican minority, we can improve on that confirmation rate before the end of the year. It already tops the Republican's record in 1997 and far exceeds the Republicans' record in 1999 when their own confirmation rate for circuit court nominees was 28 percent.

It constantly amazes me that our Republican critics run away from their record on judicial nominees, without admitting any error or wrongdoing or regrets of course, and seek to hold us to a much higher standard than they achieved. For example, they seek to compare what we have been able to do in less than 13 months with what other Congresses did over two years. They seek to make comparisons without recognizing that in the current situation we have a Republican President nominating an extreme group of nominees without consulting with Senators, as opposed to other situations in which Presidents and Senate majorities of the same party consulted and worked closely together.

A good example of this double standard is the Republican critics' use of "confirmation rates for Court of Appeals nominees." Remember that in 1996 the Republican majority's confirmation percentage for Court of Appeals nominees was zero—not a single

confirmation of a single Court of Appeals judge all year. In 1999, President Clinton sent the Senate 25 nominations to the Courts of Appeals. Of those six were renominations of people on whom the Senate had failed to take action dating back to 1996, 1997 and 1998. Of the 25 nominations to the Courts of Appeals by President Clinton, the Republican majority in the Senate would allow only seven to be confirmed by the end of the year, for a confirmation rate of 28 percent. We have already achieved a confirmation rate of 40 percent in our first year.

No judicial nominees should be rubber-stamped by the Senate, not even a President's first few choices. All nominees for these lifetime positions merit careful review by the Senate. When a President is using ideological criterion to select nominees, it is fair for the Senate to consider it, as well. Federalist Society credentials are not a substitute for fairness, moderation or judicial temperament. When a President is intent on packing the courts and stacking the deck on outcomes, consideration of balance and how ideological and activist nominees will affect a court are valid considerations.

What the President and his advisors acknowledge they are doing is nominating ideologically conservative judicial nominees to stack the 5th, 6th, and D.C. Circuits with judicial activists of their choice. I have tried to work with the White House on judicial nominations. I have gone out of my way to encourage them to work in a bipartisan way with the Senate, like past Presidents, but in all too many instances they have chosen to bypass bipartisanship. I have encouraged them to include the ABA in the process earlier, like past Presidents, but they have refused to do so even though their decision adds to the length of time nominations must be pending before the Senate before they can be considered.

This past January, I again called on the President to stop playing politics with judicial nominations and act in a bipartisan manner. In June, I sent a detailed letter to the President on these issues. My efforts to help the White House improve the judicial nominations process have been rejected. I would like to improve the process and speed up the filling of judicial vacancies with qualified, fair-minded judges.

Advice and consent does not mean giving the President *carte blanche* to pack the courts. The ingenious system of checks and balances in our Constitution does not give the power to make lifetime appointments to one person alone to remake the courts along narrow ideological lines, to pack the courts with judges whose views are outside of the mainstream, and whose decisions would further divide our nation.

We have worked hard to balance these competing concerns over the past year: how to address the vacancy crisis we inherited while also not being a rubberstamp and abdicating our re-

sponsibilities to provide a democratic check on the President's choices for lifetime appointment to the federal courts. These are the only lifetime appointments in our system of government, and they matter a great deal to our future.

We have moved quickly, but responsibly, to fill judicial vacancies with qualified nominees we hope will not be activists. In our first year we confirmed 72 judges and reported 79 judicial nominees. Partisans ignore these facts. The facts are that we are reporting President Bush's nominees at a faster pace than the nominees of prior presidents, including those who worked closely with a Senate majority of the same political party. We have accomplished all this during a period of tremendous tumult and crisis.

The Judiciary Committee noticed the first hearing on judicial nominations within 10 minutes of the reorganization of the Senate, and held that hearing on the day after the Committee was assigned new members. We held unprecedented hearings during the August recess last year and proceeded with a hearing two days after the 9-11 attacks and shortly after the anthrax attack. Today, we held our 23rd hearing for judicial nominees. We are doing our best to address the vacancy crisis we inherited.

The Democratic majority in the Senate has worked hard since the change in majority last summer. We have a record of achievement and of fairness to be proud of at the recess of this session. I thank the members who have worked cooperatively with me to make progress in so many areas over the last year.

#### LEGISLATIVE SESSION

The PRESIDING OFFICER (Mr. DAYTON). The Senate will return to legislative session.

#### TRADE ACT OF 2002—CONFERENCE REPORT—Continued

Mr. DASCHLE. Mr. President, I ask unanimous consent that all time on the trade promotion authority conference report be yielded back.

Mr. BYRD. Mr. President, reserving the right to object, will the majority leader repeat his request?

Mr. DASCHLE. I ask unanimous consent that all time for debate on the conference report for the trade promotion authority bill be yielded back.

The PRESIDING OFFICER. Is there objection?

Mr. BAUCUS. Parliamentary inquiry: When may Senators speak after the vote?

Mr. DASCHLE. Mr. President, I know a number of our colleagues have indicated an interest in speaking on the issue. We will reserve a block of time immediately following the vote on the trade promotion authority conference report for that purpose.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I ask unanimous consent that I be the first to be able to speak afterwards for a period not to exceed 10 minutes.

Mr. DASCHLE. I ask unanimous consent for that request.

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

Is there objection to the additional unanimous consent request?

Mr. BYRD. Requesting what?

The PRESIDING OFFICER. To yield back time on the debate on the conference report.

Mr. BYRD. Mr. President, I make a point of order.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, the Congressional Budget Office estimates that this legislation would increase the deficit by \$7,006,000,000 from fiscal year 2002–2007 and by \$12,302,000,000 from fiscal year 2002–2012. This deficit spending results from both increases in mandatory spending and reductions in revenues.

The additional mandatory spending and reductions in revenue contained in this Conference Report are not provided for under the budget resolution approved last year.

Therefore, Mr. President, I make a point of order that the pending conference report violates section 302(f) of the Congressional Budget Act of 1974.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. Mr. President, I move to waive the budget point of order under the relevant provisions of the Budget Act and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. AKAKA) is necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote “no”.

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

The yeas and nays resulted—yeas 67, nays 31, as follows:

[Rollcall Vote No. 206 Leg.]

YEAS—67

|           |            |             |
|-----------|------------|-------------|
| Allard    | Ensign     | Lugar       |
| Allen     | Enzi       | McCain      |
| Baucus    | Feinstein  | McConnell   |
| Bayh      | Fitzgerald | Miller      |
| Bennett   | Frist      | Murkowski   |
| Biden     | Graham     | Murray      |
| Bingaman  | Gramm      | Nelson (FL) |
| Bond      | Grassley   | Nelson (NE) |
| Breaux    | Gregg      | Nickles     |
| Brownback | Hagel      | Roberts     |
| Bunning   | Harkin     | Santorum    |
| Campbell  | Hatch      | Smith (NH)  |
| Cantwell  | Hutchinson | Smith (OR)  |
| Carper    | Hutchison  | Snowe       |
| Chafee    | Inhofe     | Specter     |
| Cleland   | Jeffords   | Stevens     |
| Cochran   | Kerry      | Thomas      |
| Collins   | Kohl       | Thompson    |
| Craig     | Kyl        | Voinovich   |
| Crapo     | Landrieu   | Warner      |
| Daschle   | Lieberman  | Wyden       |
| DeWine    | Lincoln    |             |
| Domenici  | Lott       |             |

NAYS—31

|          |          |             |
|----------|----------|-------------|
| Boxer    | Edwards  | Rockefeller |
| Burns    | Feingold | Sarbanes    |
| Byrd     | Hollings | Schumer     |
| Carnahan | Inouye   | Sessions    |
| Clinton  | Johnson  | Shelby      |
| Conrad   | Kennedy  | Stabenow    |
| Corzine  | Leahy    | Thurmond    |
| Dayton   | Levin    | Torricelli  |
| Dodd     | Mikulski | Wellstone   |
| Dorgan   | Reed     |             |
| Durbin   | Reid     |             |

NOT VOTING—2

Akaka

Helms

The PRESIDING OFFICER. On this vote, the yeas are 67, the nays are 31. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to, and the point of order falls.

All time is yielded back. The question is on agreeing to the conference report.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the conference report. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. AKAKA), is necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

I further announce that if present and voting the Senator from North Carolina (Mr. HELMS) would vote “no”.

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

The result was announced—yeas 64, nays 34, as follows:

[Rollcall Vote No. 207 Leg.]

YEAS—64

|           |            |             |
|-----------|------------|-------------|
| Allard    | Enzi       | McCain      |
| Allen     | Feinstein  | McConnell   |
| Baucus    | Fitzgerald | Miller      |
| Bayh      | Frist      | Murkowski   |
| Bennett   | Graham     | Murray      |
| Bingaman  | Gramm      | Nelson (FL) |
| Bond      | Grassley   | Nelson (NE) |
| Breaux    | Gregg      | Nickles     |
| Brownback | Hagel      | Roberts     |
| Bunning   | Hatch      | Santorum    |
| Cantwell  | Hutchinson | Smith (NH)  |
| Carper    | Hutchison  | Smith (OR)  |
| Chafee    | Inhofe     | Snowe       |
| Cleland   | Jeffords   | Specter     |
| Cochran   | Kerry      | Stevens     |
| Collins   | Kohl       | Thomas      |
| Craig     | Kyl        | Thompson    |
| Crapo     | Landrieu   | Voinovich   |
| Daschle   | Lieberman  | Warner      |
| DeWine    | Lincoln    | Wyden       |
| Domenici  | Lott       |             |
| Ensign    | Lugar      |             |

NAYS—34

|          |          |             |
|----------|----------|-------------|
| Biden    | Durbin   | Reid        |
| Boxer    | Edwards  | Rockefeller |
| Burns    | Feingold | Sarbanes    |
| Byrd     | Harkin   | Schumer     |
| Campbell | Hollings | Sessions    |
| Carnahan | Inouye   | Shelby      |
| Clinton  | Johnson  | Stabenow    |
| Conrad   | Kennedy  | Thurmond    |
| Corzine  | Leahy    | Torricelli  |
| Dayton   | Levin    | Wellstone   |
| Dodd     | Mikulski |             |
| Dorgan   | Reed     |             |

NOT VOTING—2

Akaka

Helms

The conference report was agreed to. Mr. REID. Mr. President, I move to reconsider the vote.

Mr. GRAMM. 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 Nevada.

#### MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. It is my understanding Senator BAUCUS is recognized as in morning business.

The PRESIDING OFFICER. The Senator is correct. The Senator from Montana is recognized for a period of 10 minutes.

#### NOTICE

*Incomplete record of Senate proceedings.*

*Today's Senate proceedings will be continued in the next issue of the Record.*