to enforce this provision while State attorneys general would have new authority to bring civil actions against price gougers at home.

Outside our borders, we need to make it clear to oil-producing countries that colluding to fix the price of oil will not be tolerated. The Bush administration has failed to stand up to the nations that control the price of crude oil—nations such as Saudi Arabia, Iran, Nigeria, Venezuela, and others that do not have America's best interests at heart. OPEC nations, which produce about a third of the world's oil supply, stubbornly refuse to produce more oil to curb the rising prices, and now OPEC has said the price of a barrel of oil could reach $200 this year.

With the American family now spending 10 percent of their income on gasoline, we cannot afford to let OPEC continue to manipulate world oil markets. Our plan makes it clear that colluding to fix the price of oil is illegal under U.S. law. The Consumer First Energy Act gives the Attorney General of the United States the power to bring an enforcement action against any company or country engaging in such conduct.

Finally, we need to turn the tables on the big oil companies, which now pocket not only recordbreaking profits but huge taxpayer-funded subsidies that they just do not need.

As this chart shows, the dollars we pay at the gas pump flow right into big oil's pockets. Last year alone, the five biggest oil companies—ExxonMobil, Royal Dutch Shell, BP, Chevron, and ConocoPhillips—made $116 billion in profits. That is almost twice the entire budget of the U.S. Department of Transportation. Imagine if we were spending twice as much on our roads and bridges and public transit systems. ExxonMobil alone earned $40.6 billion last year—more than the entire Federal Highway Administration budget for 2007 and almost as much as the profits of the entire American credit card industry. Isn't it telling that as American families have struggled with the highest fuel costs in a generation, the biggest oil companies have celebrated recordbreaking profits? As our Nation slides deeper into recession, the oil companies' profits keep going up.

While the oil companies are gorged with profit, stuffed with profit, choking on profit, the Bush administration and their Republican friends in Congress insist on funneling to them huge tax breaks. With profits exceeding $116 billion last year alone, I cannot think of a single industry that needs extra money less than big oil, especially when that industry still resists making major investments in new technology or renewable fuels.

The Consumer First Energy Act will eliminate $17 billion in tax breaks for oil and gas companies and reallocate those tax dollars to renewable energy and new energy efficiency technology and would also create a 25-percent windfall profits tax on oil companies that do not invest in increased capacity and renewable energy sources. If they will not use their obscene profits to invest in America's energy future, well, we will have to, and we will.

We know this is short-term action. We know we need to liberate ourselves from our dependence on oil with new energy sources and technologies. We know we need something along the lines of a new Manhattan Project or a new Apollo project. It is a matter of national urgency. But the American people need action now. We cannot stand by as millions of families struggle under the weight of skyrocketing gas prices. For the woman walking home from work in the rain, for the man on the bus to his doctor, for the student hoping one day for a hybrid car, for the families going without food because they cannot buy gas, we must take action.

I urge my colleagues to support legislation to ease Americans' pain at the pump.

I yield the floor.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

EXECUTIVE SESSION

NOMINATIONS OF MICHAEL G. McGINN TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF MINNESOTA, RALPH E. MARTINEZ TO BE A MEMBER OF THE FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES, AND G. STEVEN AGEE TO BE UNITED STATES CIRCUIT JUDGE FOR THE FOURTH DISTRICT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to consider the following nominations, which the clerk will report.

The legislative clerk read the nominations of Michael G. McGinn, of Minnesota, to be United States Marshal for the District of Minnesota; Ralph E. Martinez, of Florida, to be a Member of the Foreign Claims Settlement Commission of the United States; and G. Steven Agee, of Virginia, to be United States Circuit Judge for the Fourth Circuit.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 12:30 shall be equally divided and controlled between the chairman and ranking member or their designees.

The ACTING PRESIDENT pro tempore. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, the Senate continues to make progress by confirming another lifetime appointment to one of our important Federal circuit courts. The circuit court nomination we consider today is that of Justice G. Steven Agee of Virginia.

His nomination to a long-vacant circuit court seat is the result of a breakthrough with the White House. Even more important, it fills a vacancy listed as a judicial emergency on the U.S. Court of Appeals for the Fourth Circuit. I commend the Senators from Virginia, Senator WARNER and Senator WEBB, for their work in bringing this forward. It was a bipartisan exercise on their part. I thank Senator CARDIN of Maryland for taking the time to chair the hearing on this nomination.

It is interesting that Judge Agee's nomination gives us an opportunity to be productive even in a Presidential election year, where following normal history we tend to be far less productive.

There has been a string of controversial nominations from Virginia. Until recently, President Bush had insisted on confrontation with the Senate by nominating Jim Haynes, who contributed to the torture memos, Claude Allen, and Duncan Getchell. I think he became aware they were not going to go anywhere.

When Republicans come to the Senate to discuss the pace at which we are considering judicial nominations, I am almost amused watching them because something is always wrong. It is sort of like Goldilocks. It is kind of like Goldilocks in the fairly tale—the porridge is too hot; the porridge is too cold. When I schedule hearings and even break into my recess where I should be in Vermont and come back because they are so insistent that they need to have hearings on this, and I come back and hold a hearing for nominees of President Bush, oh, golly, I am moving too quickly. They have actually criticized me for doing that. Of course, if we slow the pace down, well, then we are criticized for moving too slowly. I was thinking of that situation when I was reading ''Goldilocks'' to one of my grandchildren the other night. Of course, ''Goldilocks'' is a child's story, and they should not play childish games here.

One thing has been apparent from the outset of the year: My friends on the Republican side hope that by ignoring their own history—pocket filibustering more than 60 of President Clinton's judicial nominations while they were in the majority—that somehow they can rewrite history.

Democrats, to their credit, have not retaliated. I think of pocket filibustering 60 of President Clinton's nominees. But they say, after voting one of

those 60 out of committee, they allowed him to come to a vote on this floor. This was a very prominent African-American justice of the Missouri Supreme Court, who later became chief justice. It is obvious why they let this African-American justice come to a vote on the floor of the Senate. Every single Republican, including those Republicans who had voted for him in the Senate Judiciary Committee, came on the floor in a humiliating gesture and voted down his confirmation. It was one of the low marks of this body.

As I said, we have not retaliated. But also the Democratic majority has a responsibility not to push through the confirmation process nominations who are there simply to advance a political agenda instead of there to maintain the impartiality of our Federal judiciary.

In fact, in contrast with the Republican Senate majority that more than doubled circuit court vacancies during the Clinton administration, we have reduced vacancies by nearly two-thirds. We have reduced them in nearly every circuit during the Bush administration. With the confirmation of Steven Agee today, the Fourth Circuit will have fewer vacancies than at the end of the Clinton administration, and that, of course, was when the Senate Republican majority pocket filibustered five Fourth Circuit nominees. In fact, they refused to consider any Fourth Circuit nominees during the last 2 years of President Clinton's Presidency.

Today, we will reduce vacancies among the 13 Federal circuit courts throughout the country to 11. That, incidentally, is the lowest number of vacancies in more than a decade. When Republican Senators are ready to allow us to consider and confirm the President's nominations to fill the last two remaining vacancies on the Sixth Circuit, if Republicans will allow us to go forward with President Bush's nominees there, we can reduce the total number of circuit court vacancies to single digits for the first time in decades. So for all the smoke and mirrors on the other side, the fact remains that we have succeeded in lowering circuit court vacancies to a historically low level.

Let's take a moment and go to the charts. These are circuit court vacancies. For most of the time when President Clinton was President, the Republicans were in charge. Look what they did. By their use of pocket filibusters, they pushed the number of vacancies in the circuit courts from 16 up to 32. Were there nominees for those seats? Of course there were, but they were pocket filibustered.

I use one example, one nomination that was pocket filibustered: Well, we don't know if she is really qualified. She is now the dean of the Harvard Law School, the most prestigious law school in this country.

When we came in halfway through the first year of President Bush's term, people thought that maybe the Democrats might retaliate and do the same thing to him. We did just the opposite. We started bringing down the number of circuit court vacancies, and we continued. When I became chairman for the first time, in the summer of 2001, we quickly and dramatically lowered vacancies. We confirmed 100 nominations in only 17 months. We set an all-time record for the Senate being controlled by one party and the Presidency by another. We confirmed 100 nominations in only 17 months. That was with an uncooperative White House. And we reduced vacancies by 45 percent.

Look at the numbers. Look how the vacancies went up when the Republicans were in charge with a Democratic President, and when Democrats were in charge with a Republican President, they came down. It is the Democratic Senate majority that has worked hard to lower them in this Congress. We have gone from more than 110 vacancies to less than 50. We have reversed course from the days when the Republican Senate majority more than doubled circuit vacancies. We have lowered the circuit court vacancies that existed when I became chairman of the Judiciary Committee in the summer of 2001—32 vacancies—we lowered them to 12. Today, we lower it to 11. Of the 178 authorized circuit court judgeships, after today's confirmation, only 11 will remain vacant. We took the vacancy rate Republicans gave us of 18 percent and brought it down to 6 percent. With 166 active appellate judges and 104 senior status judges serving on the Federal courts of appeals, there are 270 circuit court judges. I think that is the most in our history.

In fact, our work has led to a reduction in vacancies in nearly every circuit. Both the Second and Fifth Circuits had circuit-wide emergencies due to the multiple simultaneous vacancies during the Clinton years with Republicans in control of the Senate. Both the Second Circuit and the Fifth Circuit now are without a single vacancy. We have already succeeded in lowering vacancies in the Second Circuit, the Fifth Circuit, the Sixth Circuit, the Eighth Circuit, the Ninth Circuit, the Tenth Circuit, the Eleventh Circuit, the DC Circuit and the Federal Circuit. With the confirmation of Justice Agee, the Fourth Circuit will join that list. Circuits with no current vacancies include the Seventh Circuit, the Eighth Circuit, the Tenth Circuit, the Eleventh Circuit and the Federal Circuit. When we are allowed to proceed with President Bush's nominations of Judge White and Ray Kethledge to the Sixth Circuit, it will join that list of Federal circuits without a single vacancy.

Less than 2 weeks ago, President Bush nominated Judge Glen E. Conrad to the second and final Virginia vacancy on the Fourth Circuit. With the support of Senator WARNER and Senator WEBB, we may still have time this year to proceed to that nomination and resolve another longstanding vacancy, further reducing vacancies on the Fourth Circuit and on Federal circuit courts in general.

I remain determined to prioritize progress and focus the Judiciary Committee on those nominations on which we can make progress and, in particular, on those in which the White House has finally begun to work with the Senate.

However, when I tried to expedite consideration of two Sixth Circuit nominations of President Bush's this month, all I got was criticism from the Republican side of the aisle. In fact, at the hearing on May 7, Republican Senators all but attacked one of the President's nominees. Senator BROWNBACK publicly apologized for his actions at the hearing, and I commend him for doing so. His apology was in the best tradition of the Senate.

Of course, last Wednesday, the same Republicans who were saying hurry up with these nominees sent scores of time-consuming questions to the nominees, all but ensuring the nominees cannot be considered this month. We will not hear them until they answer the questions. We will get the ABA reports.

Disputes over a handful of controversial judicial nominations have wasted valuable time that could be spent on the real priorities of every American. I have sought, instead, to make progress where we can. The result is the significant reduction in judicial vacancies. By turning today to the Agee nomination, we can make additional progress.

The alternative is to risk becoming embroiled in contentious debates for months and thereby foreclose the opportunity to make progress where we can. The most recent controversial Bush judicial nomination took 5½ months of debate after a hearing before Senate action was possible. We also saw what happened during the last several months of the last Congress, which was not even a Presidential election year. There were many hearings on many controversial nominations. That resulted in a great deal of effort and conflict but not in as many confirmations as might have been achieved. I prefer to make progress where we can and to work together to do so.

I am sure there are some who prefer partisan fights designed to energize a political base during an election year, but I do not. I am determined to prioritize progress, not politics, and focus the committee on those nominations on which we can make progress. The Republican Senate majority during the last 5 years of the Clinton administration more than doubled vacancies on our Nation's circuit courts, as they rose from 12 to 26. Those circuit vacancies grew to 32 during the transition to the Bush administration. The statistics are worth repeating: we have been able to reverse that trend and reduce circuit vacancies by almost two-thirds. Today there are fewer circuit court vacancies than at any time since

the 1996 session. In fact, our work has led to a reduction in vacancies in nearly every circuit. We are heading toward reducing circuit court vacancies to single digits for the first time in decades.

I have been speaking during the last several weeks about the progress we are making in repairing the terrible damage done to the confirmation process and about our progress in reducing judicial vacancies.

We can do a number of things. We can work as the White House finally did after three strikes; they finally worked with the Senators from Virginia, and we have a circuit court of appeals judge going through. There are other circuits where they could do the same thing, work with Republican Senators, work with Democratic Senators, and they could get them through. If they want to simply continue and have judges who are obviously nominated to carry out a political agenda, obviously nominated to politicize the Federal court, these people are not going to go through. What a waste of time. Why not realize that the American people do not want judicial nominations rooted in partisan politics? They want Federal judges who understand the importance of an independent judiciary. Our independent courts are a source of America's strength, endurance, and stability. Our judicial system has been the envy of the world. The American people expect the Federal courts to be impartial forums where justice is dispensed without favor to the right or the left or to any political party or faction. The only lifetime appointments in our government, these nominations matter a great deal. The Federal judiciary is the one arm of our government that should never be political or politicized, regardless of who sits in the White House.

With the Agee confirmation today, the sixth so far this year and the second circuit court confirmation, the Senate is ahead of the pace the Republican Senate majority established during the 1996 session, a Presidential election year, in which no judicial nominations were considered or confirmed by the Senate before July. That is right—today we stand six confirmations, including two circuit court confirmations, ahead of the pace Republicans set in the 1996 session. In fact, with the Agee confirmation we are already two circuit court confirmations beyond the total the Republican Senate majority allowed for that entire session, when they refused to proceed on any circuit court nominations.

So today we demonstrate progress about which I have been speaking and on which I have been working. I continue in this Congress and I will continue with the new President in the next Congress to work with Senators from both sides of the aisle to guarantee we have nonpartisan judges.

Justice Agee has 7 years of judicial experience on the State bench as a Justice on the Supreme Court of Virginia and a former judge on the Court of Appeals of Virginia. For more than 20 years prior to his judicial service, Justice Agee worked in private practice in the Commonwealth of Virginia. He was elected by the people of Virginia as a Delegate to the Virginia General Assembly where he served for over a decade. Justice Agee graduated from Bridgewater College with a B.A. and he received his J.D. from the University of Virginia School of Law. He received an L.L.M. degree in taxation from New York University School of Law.

I congratulate Justice Agee and his family on his confirmation today, and I look forward to making further progress by working together on judicial nominations.

The Virginia and Michigan vacancies on the Fourth and Sixth Circuits, respectively, have proven a great challenge. I want to commend Senator WARNER and Senator WEBB, and Senator LEVIN and Senator STABENOW for working to end these impasses. I have urged the President to work with the Virginia and Michigan Senators and, after several years, he finally has. During the last 3 months, our extensive efforts culminated in significant developments that can lead to filling two Virginia vacancies on the Fourth Circuit and two Michigan vacancies on the Sixth Circuit, three of which have been classified as judicial emergencies.

This accomplishment stands in sharp contrast to the actions of Senate Republicans who refused to consider any of the highly qualified nominations to the Fourth Circuit Court of Appeals during the last 3 years of the Clinton administration or to consider any of the highly qualified nominations to the Sixth Circuit Court of Appeals during the last 2 years of the Clinton administration. The Republican Senate majority left open five vacancies on the Fourth Circuit and four on the Sixth Circuit at the end of the Clinton administration.

The Fourth Circuit is a good example of how much time and effort we have wasted on controversial nominations by President Bush. For example, there was the highly controversial and failed nomination of William ''Jim'' Haynes II to the Fourth Circuit. As General Counsel at the Department of Defense, he was the architect of many discredited policies on detainee treatment, military tribunals, and torture. Mr. Haynes never fulfilled the pledge he made to me under oath at his hearing to supply the materials he discussed in an extended opening statement regarding his role in developing these policies and their legal justifications.

The Haynes nomination led the Richmond Times-Dispatch to write an editorial in late 2006 entitled ''No Vacancies,'' about the President's counterproductive approach to nominations in the Fourth Circuit. The editorial criticized the administration for pursuing political fights at the expense of filling vacancies. According to the Times-Dispatch, ''The president erred by renominating . . . and may be squandering his opportunity to fill numerous other vacancies with judges of right reason.''

The Times-Dispatch editorial focused on the renomination of Mr. Haynes, but could just as easily have been written about other controversial Fourth Circuit nominees.

The President insisted on nominating and renominating Terrence Boyle over the course of 6 years to a North Carolina vacancy on the Fourth Circuit. This despite the fact that as a sitting U.S. district judge and while a circuit court nominee, Judge Boyle ruled on multiple cases involving corporations in which he held investments.

The President should have heeded the call of North Carolina Police Benevolent Association, the North Carolina Troopers' Association, the Police Benevolent Associations from South Carolina and Virginia, the National Association of Police Organizations, the Professional Fire Fighters and Paramedics of North Carolina, as well as the advice of Senator JOHN EDWARDS. Law enforcement officers from North Carolina and across the country opposed the nomination. Civil rights groups opposed the nomination. Those knowledgeable and respectful of judicial ethics opposed the nomination. This President persisted for 6 years before withdrawing the Boyle nomination.

I mention these ill-advised nominations because so many Republican partisans seem to have forgotten this recent history and why there are continuing vacancies on the Fourth Circuit. The efforts and years wasted on President Bush's controversial nominations followed in the wake of the Republican Senate majority's refusal to consider any of President Clinton's Fourth Circuit nominees. All four nominees from North Carolina to the Fourth Circuit were blocked from consideration by the Republican Senate majority. These outstanding nominees included U.S. District Court Judge James Beaty, Jr., U.S. Bankruptcy Judge J. Richard Leonard, North Carolina Court of Appeals Judge James Wynn, and Professor Elizabeth Gibson. The failure to proceed on these nominations has yet to be explained. Had either Judge Beaty or Judge Wynn been considered and confirmed, he would have been the first African-American judge appointed to the Fourth Circuit.

In contrast, I worked with Senator EDWARDS to break through the impasse and to confirm Judge Allyson Duncan of North Carolina to the Fourth Circuit when President Bush nominated her. I worked to reduce Federal judicial vacancies in North Carolina by confirming three judges last year Judge Schroeder, Judge Reidinger and Judge Osteen. Previously during the Bush administration, I cooperated in the confirmation of Judge Whitney, Judge Conrad, Judge Dever, Judge McKnight, and Judge Flanagan. That totals nine Federal judges in North Carolina, including a Fourth Circuit judge, during

the Bush Presidency. By contrast, during the entire eight years of the Clinton administration, only one district court judge was allowed to be confirmed in North Carolina.

We have also made progress in South Carolina. Senator GRAHAM follows Senator Thurmond as South Carolina's representative on the Judiciary Committee. Despite the controversy that accompanied the nomination of Judge Dennis Shedd, and my own opposition to it, I presided as chairman when we considered that nomination and when the Senate granted its consent. I also presided over consideration of the nomination of Terry Wooten. More recently, we acted favorably on the nominations of Harvey Floyd and Robert Bryan Harwell.

While I chaired the Senate Judiciary Committee from the summer of 2001 to the end of 2002, I presided over the consideration and confirmation of three Fourth Circuit judges nominated by President Bush. All together, President Bush has already appointed five judges to the Fourth Circuit. By contrast, President Clinton was allowed by Senate Republicans to appoint three and left office with five vacancies existing on that court.

Of course, during the Clinton administration, Republican Senators argued that the Fourth Circuit vacancies did not need to be filled because the Fourth Circuit had the fastest docket time to disposition in the country. If the Agee nomination is confirmed, as I expect it will be, the Fourth Circuit will have fewer vacancies than it did when Republicans claimed no more judges were needed.

Judge Agee will succeed Judge Michael Luttig, who retired a few years ago to take a more lucrative position in the private sector. Judge Luttig was known as a very conservative judge on the Fourth Circuit. He was involved in the Padilla case a few years ago and condemned the shifting legal positions of the Bush administration in that case involving an American citizen. He noted that the Bush administration's maneuvering had consequences ''not only for the public perception of the war on terror but also for the government's credibility before the courts in litigation ancillary to that war.'' Judge Luttig went on to note that the administration's behavior in ''yield[ing] to expediency'' left an impression that ''may ultimately prove to be [at] substantial cost to the government's credibility.'' In those independent observations, Judge Luttig performed a public service.

I have likewise urged the President to work with the Michigan Senators, and, after 7 years, he finally has. Last month, our extensive efforts culminated in a significant development that, unless partisanship interferes, can lead to filling the last two vacancies on the Sixth Circuit before this year ends. This accomplishment stands in sharp contrast to the actions of Senate Republicans who refused to consider any nomination to the Sixth Circuit Court of Appeals during the last 3 years of the Clinton administration. Ultimately, the Republican-led Senate left open four vacancies on that circuit.

Mine has been a different approach and one that has led to significant progress. I am glad to see that progress continue today with our confirmation of the nomination of Justice G. Steven Agee of Virginia to the U.S. Court of Appeals for the Fourth Circuit.

Mr. President, I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, the nomination of Justice Steven Agee is pending for the Court of Appeals for the Fourth Circuit. Justice Agee has an outstanding record; he has been a judge on the Court of Appeals for Virginia for 2 years, from 2001 to 2003, and a Justice on the Supreme Court from 2003 until the present time.

The record of Michael G. McGinn, to be a U.S. Marshal for the district of Minnesota, is also outstanding.

The record of Ralph Eduardo Martinez, to be a Commissioner for the Foreign Claims Settlement Commission, also exceptional, is notable in part because his brother is Senator MEL MARTINEZ.

I ask unanimous consent that their resumes be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MICHAEL G. MCGINN

UNITED STATES MARSHAL, DISTRICT OF MINNESOTA

Birth: 1947; St. Paul, Minnesota.

Legal Residence: Minnesota.

Education: B.A., University of St. Thomas, 1979.

Experience: St. Paul Police Department, St. Paul, Minnesota, 1968–1998: Police Officer, 1968–1975; Sergeant, 1975–1980; Lieutenant, 1980–1984; Captain, 1984–1992; Commander, 1992–1998. Independent Contractor, McGinn & Associates, 1999. State Senator, Minnesota State Senate, 2003–2006; Assistant Minority Leader, 2005–2006.

Selected Activities: Board Member, Boys & Girls Club of St. Paul, 1997–1998. Board Member, St. Paul Police Foundation, 2006–Present. Board Member, Minnesota State Board of Public Defense, 2007–present.

Honors & Awards: Team Achievement Award, City of St. Paul, 1995. Outstanding Legislator, Minneapolis Police Federation, 2004. Seven Department Letters of Commendation. Eight Unit Citations.

RAFAEL (RALPH) EDUARDO MARTINEZ

COMMISSIONER, FOREIGN CLAIMS SETTLEMENT COMMISSION

Birth: 1950; Sagua La Grande, Villa Clara, Cuba.

Legal Residence: Florida.

Education: J.D., Florida State University College of Law, 1976. B.S., University of Florida, 1973.

Employment: Attorney, Gurney, Gurney & Handley, 1976–1981. Shareholder, McEwan, Martinez & Dukes, PA, 1981–Present. Chairman, CNL Bank, 2003–Present.

Selected Activities: U.S. Public Delegate to the 57th UN General Assembly, 2003. Board of Trustees, University of Richmond, 2003–2007.

Honors & Awards: Award of Merit, Orange County Bar Association, 1991, 1992. ''John Sterchi ''Lifetime Achievement Award, Central Florida YMCA, 2000.

G. STEVEN AGEE

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Birth: 1952, Roanoke, Virginia.

Legal Residence: Virginia.

Education: B.A., Bridgewater College, 1974. J.D., University of Virginia School of Law, 1977. LL.M., New York University School of Law, 1978.

Employment: Associate, Martin, Hopkins & Lemon, P.C., 1977–1979. Associate, Rocovich & Dechow, P.C., 1979–1980. Shareholder, Osterhoudt, Ferguson, Natt, Aheron and Agee, P.C., 1980–2000. Member, Virginia House of Delegates, 1982–1994. Judge, Court of Appeals of Virginia, 2001–2003. Justice, Supreme Court of Virginia, 2003–Present.

Military Service: United States Army Reserve, Judge Advocate General's Corps, 1986–1997.

Selected Activities: Member, Virginia Criminal Sentencing Commission, 1997–2000. Board of Trustees, Bridgewater College, 1988–Present. Member, Salem Rotary Club, 1984–Present; Board of Directors, 1995–1996. Board of Directors, Bradley Free Clinic, 1988–Present. Recipient, Outstanding Legislator Award, Virginia Chamber of Commerce, 1993. Recipient, Outstanding Young Alumnus Award, Bridgewater College, 1986. Member, Virginia State Bar, 1977–Present; Member, Board of Governors, Education of Lawyers Section, 2007–Present. Member, St. Paul's Episcopal Church, 1995–Present; Member of Vestry, 1998–2000.

ABA Rating: Unanimous ''Well Qualified''.

Mr. SPECTER. Mr. President, I will use the balance of my time on the pending issue to discuss the agreement made between the Democratic and Republican leaders to have three circuit judges confirmed before Memorial Day. The concerns, which I expressed at some length yesterday, but will summarize very briefly today, are that there simply has been insufficient time to process the nominees the majority chose according to standard Committee procedures. I refer specifically to the nomination of Michigan Court of Appeals Judge, Helene White, who was nominated on April 15, with only 22 days elapsing between the time of her nomination and her hearing.

The average time between a circuit court nominee's nomination and hearing has been 162 days during the Bush presidency. When a hearing was scheduled for Peter Keisler 33 days after his nomination, there was an objection made by all of the Democratic Senators on the Committee. This happened in 2006. At Mr. Keisler's hearing Senator SCHUMER had this to say:

> Let me reiterate some of the concerns we expressed about proceeding so hastily on this nomination. First, we barely had time to consider the nominee's record. Mr. Keisler was named to the seat 33 days ago, so we are having this hearing with astonishing and inexplicable speed. The average time for a nomination to hearing for the last seven nominees to that court is several times that long.

Well, the nomination of Peter Keisler was much easier with respect to the

pending record than the record for Judge White who has been on the bench for many years.

First, an issue arose with Judge White because her questionnaire was incomplete. For example, she did not provide reversed opinions that had not been published, as required. During the course of the hearing, there was considerable concern about what Judge White had done while sitting on the Michigan court with respect to the soundness of her judicial scholarship. Then, yesterday, an objection was raised by Senator REID that so many questions were submitted for Judge White. However, the fact is, the number of questions is relatively modest by comparison—73 questions for Judge White. Last year, Judge Jennifer Elrod, nominee to the Fifth Circuit, had 108 questions submitted by the Democrats. Last year, Judge Leslie Southwick had 80 questions submitted by Democrats. Grace Becker, a nominee for the Department of Justice, Civil Rights Division, had 250 questions submitted by the Democrats. These are just a few examples. So the number Judge White received is relatively modest in comparison to others.

Next, you have the situation that there is the absence of the report of the American Bar Association, which is still not in on Judge White, and is not expected until the end of the month.

It is unprecedented to have a hearing on a circuit judge without having the ABA report in hand—absolutely unprecedented.

Yesterday, I spoke at some length about the importance of a court of appeals judge. The courts of appeals are the last appeal before the Supreme Court, meaning that in virtually all of their cases, their decisions are final. If there is a 2-to-1 decision and Judge White is one of the two in the majority, then that is the law, and it has very profound effects. So, it is a very serious obligation of the Senate, under our constitutional responsibility, to advise and consent, and to be sure we take adequate time for deliberation on the matter.

The concern that I expressed yesterday, and will comment on very briefly today, is that there were other nominees waiting who could have been processed in this time without this rush to judgment and without this unprecedented practice. For example, Peter Keisler has had a hearing and has been waiting over 690 days for a committee vote. He could have been processed without this rush to judgment. Judge Conrad has been waiting for 308 days for a hearing and could have been processed without this rush to judgment. Steven Matthews has been waiting 257 days and could have been processed without this rush to judgment.

There were ample nominees available. The majority did not have to proceed with Judge White's nomination. Yesterday, the Senator from Nevada commented that nobody presumed to tell ARLEN SPECTER, when I was chairman of the Judiciary Committee, what the scheduling should be or what the order of business should be. But, as I pointed out at some length yesterday, the White House wanted to have the hearing on Chief Justice Roberts starting in August of 2005. I consulted with Senator LEAHY in advance. He objected to it. I thought he was right. I, frankly, thought he was right in advance of consulting him, but I still consulted him. The hearing didn't start until September. Similarly, the White House wanted to have the hearing of Justice Alito concluded before Christmas. I consulted with Senator LEAHY again, and Justice Alito's hearing started in January. Later, the President told me personally that he thought my judgment was right.

The point I raise is—there was always consultation when I was chairman. But, on these matters, regrettably, there has been none. It is still my hope that we will be able to find some way through this morass. Senator LEAHY and I have had a very good record of working on a bipartisan basis. It is my hope that we will establish a protocol for consideration of judicial nominees that so many days after a nomination, there will be a hearing, then so many days later, there will be action by the Judiciary Committee, and then so many days later, there will be floor action. That protocol would prevent this morass, which has engulfed this Senate. I look forward to working with Senator LEAHY to accomplish that.

On the state of the record, I feel constrained to say that the facts speak for themselves. Processing Judge White in this manner, breaking all of the precedents and rules, is simply not the way to conduct the business of the Senate. The deal could have been completed with the other nominees who are waiting in the wings. That is the way the Senate ought to function.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Maryland is recognized.

Mr. CARDIN. Mr. President, I yield myself 3 minutes.

First, let me express my support for Judge Agee's confirmation. I had the opportunity to chair Judge Agee's confirmation hearing. I thank Senator WARNER and Senator WEBB for the manner in which they worked with the White House to get an appointment that could go through the confirmation process, and one which I hope my colleagues will support.

I support Judge Agee because of his experience. I am pleased he has legislative experience. I think that will help him on the court. He respects the rule of law and precedents, and he believes in the independence of the judiciary. He has expressed concerns at times with political interference within the judicial branch of Government. I think he is well qualified to be confirmed to the circuit court.

Let me comment very briefly on the comment made by my colleague, Senator SPECTER. Let me point out that Judge White was first appointed on January 7, 1997. She then waited 4 years for action in this body and received none because of being held up by the Republicans. So when we say we are ''rushing to judgment,'' I think waiting 4 years without any action is not rushing to judgment. It seems as though the majority leadership is being criticized at times for moving too fast and also too slow. You cannot have it both ways.

In regard to circuit court appointments, there have been three I have opposed—two because of lack of experience, and one because of his record. I was joined by other Members who opposed those nominations. None of us sought to delay those confirmation votes. In fact, on one, the Republican leadership asked that we hold the confirmation vote in committee until they could get some more support.

So I think you should be judged by the record. Let me point out the record very clearly. If you look at the record on vacancies in circuit courts, starting with President Clinton, there was 17. At the end of his term, it grew to 32. The record by the Democrats has been consistent to reduce that so that we now have 12 vacancies. I think the record speaks for itself.

Obviously, we want to get as many judges confirmed as possible. I hope we can work in a bipartisan manner to make sure these vacancies are filled. If the White House would work with the local Senators and with us, I think we can get more confirmations to our circuit courts.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from New York is recognized.

LEGISLATIVE SESSION

Mr. SCHUMER. Mr. President, I ask unanimous consent the Senate resume legislative session.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

FAIR CREDIT REPORTING ACT AMENDMENTS

Mr. SCHUMER. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4008, which was received from the House.

The PRESIDING OFFICER. The clerk will state the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 4008) to amend the Fair Credit Reporting Act to make technical corrections to the definition of willful noncompliance with respect to violations involving the printing of an expiration date on certain credit and debit card receipts before the date of the enactment of this Act.

There being no objection, the Senate proceeded to consider the bill.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the bill be