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Senate

The Senate met at 5 p.m. and was called to order by the Honorable DON NICKLES, a Senator from the State of Oklahoma.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Wondrous sovereign God, giver of every good and perfect gift, in this Thanksgiving season we express gratitude for Your many blessings. Thank You for military people in harm's way who sacrifice to keep us free. Be with their families during this season of gratitude. Thank You for emergency personnel who will work this Thanksgiving to keep America safe. Bless them with Your peace. Give prayerful mercies to the many who will journey to see loved ones.

In these challenging times, Lord, rule our world by Your wise providence. Sustain our Senators, enabling them to leave a legacy of excellence. As you remind them of Your precepts, guide them with righteousness and integrity. You are our help and our shield, and we wait in hope for You. Amen

PLEDGE OF ALLEGIANCE

The Honorable DON NICKLES led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will read a communication to the Senate.

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, November 24, 2004.

To the Senate:

Under the provisions of rule 1, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DON NICKLES a Senator from the State of Oklahoma, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. NICKLES thereupon assumed the Chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

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

Mr. MCCONNELL. I thank the occupant of the chair.

SCHEDULE

Mr. MCCONNELL. Mr. President, Senator REID and I did not expect to be back so soon, but we are here again for a very brief session. We convene to consider two housekeeping matters that have been received from the House. The House has not yet acted on the concurrent resolution which will correct the enrollment of the consolidated or Omnibus appropriations measure. Without that House action we will be unable to transmit the conference report to the House so that they may then transmit the bill to the President. Therefore, we are here today to pass a short-term continuing resolution which is at the desk.

MAKING FURTHER CONTINUING APPROPRIATIONS FOR FISCAL YEAR 2005

Mr. MCCONNELL. Having said that, I now ask consent that the Senate proceed to the consideration of House Joint Resolution 115 which is at the desk; provided further that the joint resolution be read three times and passed, that the motion to reconsider be laid upon the table.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

The joint resolution (H.J. Res. 115) was read the third time and passed.

CONDITIONAL RECESS OR ADJOURNMENT OF THE HOUSE AND SENATE

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the House message accompanying the adjournment resolution.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

H. CON. RES. 529

Resolved, That the House agree to the amendment of the Senate to the resolution (H. Con. Res. 529) entitled ''Concurrent resolution providing for a conditional adjournment of the House of Representatives and a conditional recess or adjournment of the Senate'', with the following House amendments to Senate amendment:

(1) On page 1, line 2, before ''on a motion'' insert ''or on Saturday, November 27, 2004,''.

(2) On page 1, line 8, strike ''Wednesday, November 24'' and insert in lieu thereof ''Saturday, November 27''.

Mr. MCCONNELL. I further ask the Senate concur in the amendments of the House.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

AMENDING THE DISTRICT OF COLUMBIA COLLEGE ACCESS ACT OF 1999

Mr. MCCONNELL. I ask unanimous consent that the Senate now proceed to the immediate consideration of Calendar No. 659, H.R. 4012.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 4012) to amend the District of Columbia College Access Act of 1999 to reauthorize for five additional years the public school and private school tuition assistance programs established under the Act.

● This ''bullet'' symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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

AMENDMENTS NOS. 4080 AND 4081

Mr. MCCONNELL. I ask unanimous consent the amendments at the desk be agreed to, the bill as amended be read a third time and passed, the motions to reconsider be laid upon the table, and any statements relating to the bill be printed in the RECORD.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

The amendments were agreed to, as follows:

AMENDMENT NO. 4080

(Purpose: To reduce extension to 2 years)

In section 1(a) strike ''10 succeeding'' and insert ''7 succeeding''.

In section 1(b) strike ''10 succeeding'' and insert ''7 succeeding''.

AMENDMENT NO. 4081

(Purpose: To amend the title of the bill)

Amend the title to read as follows:

''To amend the District of Columbia College Access Act of 1999 to reauthorize for 2 additional years the public school and private school tuition assistance programs established under the Act.''.

The bill (H.R. 4012), as amended, was read the third time and passed.

SENATOR FRIST'S REMARKS TO FEDERALIST SOCIETY

Mr. MCCONNELL. Mr. President, I ask unanimous consent to place in the RECORD a speech delivered on November 11 by the majority leader, Senator FRIST, to the Federalist Society regarding the treatment of judicial nominations in the 108th Congress.

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

REMARKS AS PREPARED FOR MAJORITY LEADER BILL FRIST, MD, THE FEDERALIST SOCIETY 2004 NATIONAL CONVENTION

WARDMAN PARK MARRIOTT HOTEL, Nov. 11.—Thank you all for that warm welcome. You've succeeded at an almost impossible task: you've put a doctor at ease in a room filled with a thousand lawyers.

I take great pride in being a citizen legislator—someone who sets aside a career for a period of time to serve in public office.

Perhaps the most famous citizen legislator of modern times was Jefferson Smith. Or, as he's better known: ''Mr. Smith'' in the classic American film, ''Mr. Smith Goes to Washington.''

One of my favorite scenes in that movie is when Mr. Smith takes the oath of office. He raises his right hand. And the Senate President reads the oath.

Mr. Smith pledges: ''I do.'' Then the Senate President says with a less than subtle touch of sarcasm: ''Senator, you can talk all you want to, now.''

United States Senators do talk all they want. And, with only one Senator and the presiding officer in the chamber during many debates, you often see them talking just to themselves.

It makes me think that I'd be a lot better prepared as Majority Leader with 20 years of experience, not as a heart surgeon, but as a psychiatrist.

The right to talk—the right to unlimited debate—is a tradition as old as the Senate itself.

It's unique to the institution. It shapes the character of the institution.

It's why the United States Senate is the world's greatest deliberative body. And, as James Madison wrote in Federalist No. 63, ''History informs us of no long lived republic which had not a senate.''

From time to time Senators use the right to unlimited debate to stop a bill. A Senator takes the floor, is recognized, starts talking, and doesn't stop talking.

This brings Senate business to a halt. And it's called a filibuster.

Senators have used the filibuster throughout much of Senate history. The first was launched in 1841 to block a banking bill. Civil rights legislation was filibustered throughout the 1950s and 60s.

The flamboyant Huey Long once took the floor and filibustered for over 15 hours straight.

When Senator Long suggested that his colleagues—many of whom were dozing off—be forced to listen to his speech, the presiding officer replied, ''That would be unusual cruelty under the Bill of Rights.''

The current Minority has not hesitated to use the filibuster to bring Senate business to a halt in the current Congress.

I have grave concerns, however, about one particular and unprecedented use of the filibuster.

I know it concerns you, as well. And it should concern every American who values our institutions and our constitutional system of government.

Tonight I want to share with you my thoughts about the filibuster of judicial nominees: it is radical; it is dangerous; and it must be overcome.

The Senate must be allowed to confirm judges who fairly, justly and independently interpret the law.

The current Minority has filibustered 10—and threatened to filibuster another 6—nominees to federal appeals courts.

This is unprecedented in over 200 years of Senate history.

Never before has a Minority blocked a judicial nominee that has majority support for an up-or-down vote on the Senate floor.

Never.

Now the Minority says the filibuster is their only choice, because the Majority controls both the White House and the Senate. But that fails the test of history.

The same party controlled the White House and the Senate for 70 percent of the 20th Century. No Minority filibustered judicial nominees then.

Howard Baker's Republican Minority didn't filibuster Democrat Jimmy Carter's nominees.

Robert Byrd's Democrat Minority didn't filibuster Republican Ronald Reagan's nominees.

Bob Dole's Republican Minority didn't filibuster Democrat Bill Clinton's nominees.

Now there's nothing specific in the formal Rules of the Senate that restrained those Minorities from filibustering. They simply used self-restraint.

Those Senators didn't filibuster, because it wasn't something Senators did.

They understood the Senate's role in the appointments process. And they heeded the intent and deferred to the greater wisdom of the Framers of the Constitution.

Then came the 108th Congress.

Majority control of the Senate switched hands. And one month later—in February 2003—the Minority radically broke with tradition and precedent and launched the first-ever filibuster of a judicial nominee who had majority support.

That nominee was Miguel Estrada—a member of this society.

You know first-hand that Miguel Estrada is an extraordinary human being.

He's an inspiration to all Americans and all people who aspire to one day live the American dream.

Miguel Estrada immigrated to the United States from Honduras as a teenager. He spoke little English.

But with a strong heart and a brilliant mind, he worked his way up to the highest levels of the legal profession.

He graduated magna cum laude and Phi Beta Kappa from Columbia College in New York. He earned his J.D. from Harvard Law School—where he served as editor of the Harvard Law Review.

He clerked in the Second Circuit Court of Appeals and for Supreme Court Justice Anthony Kennedy. He worked as a Deputy Chief U.S. Attorney and as an Assistant to the Solicitor General of the United States.

Miguel Estrada would have been a superb addition to the D.C. Circuit court. He's considered to be among the best of the best legal minds in America.

The American Bar Association gave him their highest rating.

But after two years, more than 100 hours of debate, and a record 7 attempts to move to an up-or-down vote, Miguel Estrada withdrew his name from consideration.

A sad chapter in the Senate's history came to a close. But, unfortunately, it was just the beginning.

The Minority extended its obstruction to Priscilla Owen, Carolyn Kuhl, William Pryor,

Charles Pickering, Janice Rogers Brown, Bill Myers, Henry Saad, Richard Griffin and David McKeague.

With the filibuster of Miguel Estrada, the subsequent filibuster of 9 other judicial nominees, and the threat of 6 more filibusters, the Minority has abandoned over 200 years of Senate tradition and precedent.

This radical action presents a serious challenge to the Senate as an institution and the principle so essential to our general liberty—the separation of powers.

It would be easy to attribute the Minority's actions to mere partisanship. But there is much more at work.

The Minority seeks nothing less than to realign the relationship between our three branches of government.

The Minority has not been satisfied with simply voting against the nominees—which is their right. They want to require a supermajority of 60 votes for confirmation.

This would establish a new threshold that would defy the clear intent of the Framers.

After much debate and compromise, the Framers concluded that the President should have the power to appoint. And the Senate should confirm or reject appointments by a simple majority vote.

This is ''advice and consent.'' And it's an essential check in the appointment process.

But the Minority's filibuster prevents the Senate from giving ''advice and consent.'' They deny the Senate the right to carry out its Constitutional duty.

This diminishes the role of the Senate as envisioned by the Framers. It silences the American people and the voices of their elected representatives.

And that is wrong.

This filibuster is nothing less than a formula for tyranny by the minority.

The President would have to make appointments that not just win a majority vote, but also pass the litmus tests of an obstructionist minority.

If this is allowed to stand, the Minority will have effectively seized from the President the power to appoint judges.

Never mind the Constitution.

Never mind the separation of powers.

Never mind the most recent election—in which the American people agreed that obstruction must end.