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.

The Senate cannot allow the filibuster of circuit court nominees to continue. Nor can we allow the filibuster to extend to potential Supreme Court nominees.

Senators must be able to debate the merits of nominees on the floor and have the opportunity to publicly and permanently record a yes or no vote.

We must leave this obstruction behind. And we can—as an aberration in Senate history and a relic of a closely divided body during a challenging time for America.

The American people have re-elected a President and significantly expanded the Senate majority.

It would be wrong to allow a Minority to defy the will of a clear and decisive Majority that supports a judicial nominee.

And it would be wrong to allow a Senate Minority to erode the traditions of our body and undermine the separation of powers.

To tolerate continued filibusters would be to accept obstruction and harden the destructive precedents established in the current Congress.

With its judicial filibusters, the Minority has taken radical action. Now the damage must be undone.

American government must be allowed to function. And America must be allowed to move forward.

Senate rules and procedures have been shaped and molded throughout the body's history.

They're not set in stone. They can be changed to fit the governing climate, to respond to emerging challenges, and to restore vital constitutional traditions.

So when it became clear that the Minority was intent on abusing the filibuster in this Congress, we proposed to reform the rules.

In May 2003, Senator Zell Miller and I—joined by every member of the Majority leadership—proposed a new way to end debate and move to an up-or-down vote on nominations over a reasonable period of time.

A first attempt would require 60 votes, the next 57, the next 54, then 51, and finally we could end debate by a simple majority.

The Frist-Miller resolution went to the Rules Committee. Senator Lott chaired a hearing and the committee approved it in June.

For the remainder of 2003 and all of this year, Frist-Miller has sat on the Senate calendar—facing a certain filibuster by those who want to continue to filibuster judges.

The Frist-Miller reforms would be a civil, constructive and cooperative way to end the filibuster of judicial nominees.

The Senate now faces a choice: either we accept a new and destructive practice, or we act to restore constitutional balance.

We are the stewards of rich Senate traditions and constitutional principles that must be respected. We are the leaders elected by the American people to move this country forward.

As my colleague, Senator Feinstein said, ''A nominee is entitled to a vote. Vote them up; vote them down. . . . If we don't like them, we can vote against them. That is the honest thing to do.''

I fervently believe in the principles of the American Founding.

And I know you do too. Because I serve and work closely with 4 members of this society: Mitch McConnell, John Kyl, Jeff Sessions and Orrin Hatch.

Let me say this about these Senators: there are no more passionate defenders of America's founding principles anywhere in our government. They are true patriots.

They know that the principles enshrined in our Constitution have guided a miraculous experiment that has matured into the most stable form of government in human history.

And if we truly desire lasting solutions to the challenges of the 21st century, those same principles must guide us today and in the future.

The filibuster of judicial nominees is about Senate tradition. It's about the separation of powers. It's about our constitutional system of government.

But, at the most fundamental level, this filibuster is about our legacy as the leaders of the greatest people and nation on the face of the Earth.

What will we accomplish over the next four years? What will we do with the time and the trust that the American people have so generously given us?

One way or another, the filibuster of judicial nominees must end. The Senate must do what is good, what is right, what is reasonable, and what is honorable.

The Senate must do its duty.

And, when we do, we will preserve and vindicate America's founding principles for our time and for generations to come.

ADDITIONAL STATEMENTS

TAX RETURN PRIVACY

● Mr. CONRAD. On Saturday, November 20, 2004, the American taxpayers dodged a bullet. The Congress came close, much too close, to passing legislation that would have stripped every American of their right to privacy with regard to their tax returns.

The Senate averted this dangerous step, in part, because members of my staff—and one staffer in particular—came in to work on Saturday and read through more than 3,646 pages of a bill and its explanatory text.

As my colleagues know, we were called to the Chamber on Saturday to debate and vote on the conference report on H.R. 4818, the Omnibus appropriations bill. This so-called ''catch-all spending'' package included nine different appropriations bills costing some $388 billion for fiscal year 2005.

Many Members of Congress were familiar with some elements of the individual appropriations bills, including funding levels for programs and projects important to our States. But few, if any, Members were able to carefully analyze the bill in its entirety. Because the bill was delivered to each Senator and House Member at 6 a.m., we did not have much time to review the massive bill before we were asked to vote on it.

When the bill arrived I asked members of my staff to pore over the bill, each tasked with finding and reviewing sections of the bill where they have policy expertise. It was during this effort to review the bill that one of my staff members discovered an egregious tax provision. Steve Bailey, my tax counsel on the Senate Budget Committee, reading the Transportation-Treasury section of the bill, spotted section 222 and immediately realized it was a huge problem. The paragraph read:

Notwithstanding any other provision of law governing the disclosure of income tax returns or return information, upon written request of the Chairman of the House or Senate Committee on Appropriations, the Commissioner of the Internal Revenue Service shall hereafter allow agents designated by such Chairman access to Internal Revenue Service facilities and any tax returns or return information contained therein.

Mr. Bailey, who has worked on tax issues for more than 20 years, knew that if enacted, the provision would endanger the right and expectation of every American. This provision held the very real promise that the privacy of their tax returns could be compromised.

Thanks to Mr. Bailey's close reading of the bill and his quick recognition of the negative implications of that 60-word paragraph, I was able to bring the paragraph's existence to the attention of my colleagues. Fortunately, the Senate then firmly and unanimously rejected the paragraph and demanded that the House of Representatives remove the offending language before the bill could be sent to the President's desk for his signature.

At the conclusion of my remarks, I would like to have printed in the RECORD at the conclusion of my remarks an editorial from today's New York Times, ''Snookering the Taxpayers.'' This editorial mentions ''a sharp-eyed Democratic staff member [who] spotted the terse paragraph sitting like a toxic clam in the muck of the omnibus spending bill. . . .'' This editorial concludes with a clear understatement, ''Taxpayers can only hope someone keeps reading.''

Well, I can assure my constituents in North Dakota that my staff and I will keep on reading. But I also hope this experience will lead to a new method of doing business next year. The Senate should never again tolerate a process by which we are given a 3,600-page bill and are then asked to vote upon that bill several hours later. As my colleague from Arizona, Senator JOHN MCCAIN, has noted, this process is broken and it must change. I will be working with my colleagues to accomplish that goal next year.

I wanted to take this opportunity to recognize and thank Mr. Steve Bailey for his outstanding work and service to me and to the Senate. This past week, his hard work made a big difference to millions of American taxpayers.

The editorial follows.

[From the New York Times, Nov. 24, 2004]

SNOOKERING THE TAXPAYERS

It is called a snooker clause in legislative parlance—a last-minute insert into a dense and hurried midnight bill that, if ever disclosed after passage, always leaves legislators shocked, shocked at how such an undemocratic bit of mischief ever came to be. ''No earthly idea how that got in there,'' said Bill Frist, the Senate majority leader, after the impenetrable, 14-inch-thick omnibus budget bill turned out to have a provision giving Congressional chairmen and staff members entree to Americans' tax returns without regard to privacy protections.

This has been a sacrosanct area ever since the Watergate scandals. Severe civil and criminal penalties were enacted after the Nixon administration's rifling of private tax returns to build the ''enemies list'' aimed at government harassment.