does not represent the views of any particular political party, and it does not represent any particular political philosophy. The flag is not simply another ''idea'' or ''point of view'' competing for recognition in the marketplace of ideas.'' Let us act now to protect the symbol of our nation's liberty and freedom.

Sincerely,

JAMES V. HANSEN.
CHRIS CANNON.
MERRILL J. COOK.

GEORGE W. BUSH,
GOVERNOR OF TEXAS,
Austin, TX, March 24, 2000.

Greetings to: The Members of the American Legion.

Congratulations as you gather with family and friends in the capital of a grateful nation that you served so bravely. Coming together in Washington, D.C., is a powerful reminder that those who want to lead America accept two important obligations. One is to use our military power wisely, remembering the costs of war. The other is to remember our soldiers who have paid those costs.

The American Legion helps us to carry out those obligations. You defend and recall America's history of sacrifice. You stand as a friend to the families of our fallen soldiers. You serve America's communities in countless ways—an example of true service in a comfortable age.

One of the most enduring symbols of your sacrifice and service is our nation's flag. Brave Americans have fought and died to protect the ideals of democracy that it represents. That is why I strongly support a constitutional amendment protecting the flag from desecration—to honor our courageous veterans and to send the unmistakable message that Old Glory is a sacred symbol of freedom to all Americans.

I believe our government should honor our commitments to our veterans as you have honored yours.

Laura joins me in sending our best wishes to each and every one of you.

Sincerely,

GEORGE W. BUSH.

APRIL 5, 1999.

DEAR SENATOR HATCH: I am writing to express my support and gratitude for your sponsorship of the flag protection constitutional amendment (S.J. Res. 14), which I understand may come before the Senate for a vote in the near future. Like you, I regard legal protections for our flag as an absolute necessity and a matter of critical importance to our nation. The American flag, far from a mere symbol or a piece of cloth, is an embodiment of our hopes, freedoms and unity. The flag is our national identity.

I am honored to have commanded our troops in the Persian Gulf War and humbled by the bravery, sacrifice and ''love of country'' so many great Americans exhibited in that conflict. These men and women fought and died for the freedoms contained in the Constitution and the Bill of Rights and for the flag that represents these freedoms, and their service and valor are worthy of our eternal respect. Most of these great heroes share my view that there is no threat to any right or freedom in protecting the flag for which they fought. Perhaps as much as any American, they embrace the right to free speech. Indeed, they risked death to protect it.

I do see a very real threat in the defilement of our flag. We are a diverse people, living in a complicated, fragmented society. And I believe we are imperiled by a growing cynicism toward certain traditions that bind us, particularly service to our nation. The flag remains the single, preeminent connection among all Americans. It represents our basic commitment to each other and to our country. Legally sanctioned flag desecration can only serve to further undermine this national unity and identity that must be preserved.

I am proud to lend my voice to those of a vast majority of Americans who support returning legal protections for the flag. This is an effort inspired by our nation's history and our common traditions and understanding, under which, until a very recent and controversial Supreme Court decision, the American flag was afforded legal protection from acts of desecration. The flag protection constitutional amendment is the only means of returning to the people the right to protect their flag, and your leadership will undoubtedly help to ensure the success of this important campaign.

Sincerely,

H. NORMAN SCHWARZKOPF,
General, U.S. Army, Retired.

THE CITIZENS FLAG ALLIANCE, INC.,
Indianapolis, IN, April 22, 1999.

USA TODAY,
Arlington, VA.

TO THE EDITOR: To say that to, ''ban flag burning gains ground by hiding risks,'' (''Don't Amend Bill Of Rights,'' editorial, April 21, 1999) hides the truth. You also hide the truth by saying the First Amendment has never been amended. The truth is Americans had the right to protect their flag from our birth until 1989 when the Supreme Court amended the First Amendment by calling flag burning ''speech.'' What were the risks? You denigrate the ''political opportunists who want to rewrite the wisdom of James Madison.'' Those political opportunists are the vast majority of the American people, and James Madison agrees with them. He denounced flag burning, as did another founding father, Thomas Jefferson.

This issue has nothing to do with ''feel-good politics.'' Flag burning is wrong but what it teaches our children about respect, about our values, about who owns the Constitution and the demeaning of the will of the majority, is worse.

The majority of Americans understand the importance of free speech; many have died for it. What they do not understand is that defecating on the flag is ''speech.'' The only majority in America who feel good about the freedom to burn the American flag are the media and 5 out of 9 judges on the Supreme Court.

Sincerely,

Maj. Gen. PATRICK BRADY,
U.S. Army, Ret.,
Chairman of the Board.

APRIL 26, 1999.

ST. LOUIS POST DISPATCH,
Attention: Letters to the Editor,
Reached via fax: (314) 340–3139.

DEAR EDITOR: The recent editorial, ''Desecrating the Constitution'' (April 21), is a clear example of the complete disregard by a slim minority of the media to follow the good judgement of the American people.

The editors of the Post Dispatch should undertake a more studied analysis of the flag amendment before jumping to conclusions. The first line of the editorial reads, ''Our nation has made it through 208 years without amending the First Amendment.'' The U.S. Flag, which predates the Constitution, was protected under our nation's law and traditions for 200 years. A razor thin, five-Justice majority of the Supreme Court wrested this right from the American people in 1989 when they invalidated flag-protection laws in 48 states and the District of Columbia.

This tradition and precedent has been recognized by Justices on five previous Supreme Courts. In fact, Justice Hugo Black, perhaps the staunchest defender of individual rights ever to sit on the Supreme Court, stated, ''It passes my belief that anything in the Federal Constitution bars . . . making the deliberate burning of the American flag an offense.''

In every sense, an amendment to return to the American people the right to protect their flag would change nothing in the Constitution. Nor would it infringe our precious First Amendment rights. On the contrary, it would restore the Constitution and the First Amendment to a time-honored interpretation and understanding that existed for all but the last ten years of our history.

The editors mention an invisible ''slippery slope'' if a flag-protection amendment passes. Over 10,000 amendments have been proposed and only twenty-seven have been ratified—the first ten are the Bill of Rights. If there is any ''slope'' in amending the Constitution, it is a steep incline.

Finally, for the record, burning a cross on anyone's lawn is a hate crime punishable under law. Burning a flag is a hate crime against all Americans and should also be punishable under law.

If our flag is not deserving of protection, then it is not worthy to be draped on the coffins of our dead soldiers. Senator Ashcroft understands the intrinsic value of the flag. Unfortunately, its meaning is lost on the editors of the Post-Dispatch.

Sincerely,

JOSEPH J. FRANK,
Past National Commander,
The American Legion.

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MILLENNIUM DIGITAL COMMERCE ACT

Mr. LOTT. Mr. President, I ask the Chair lay before the Senate a message from the House of Representatives on the bill (S. 761) to regulate interstate commerce by electronic means by permitting and encouraging the continued expansion of electronic commerce through the operation of free market forces, and other purposes,

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 761) entitled ''An Act to regulate interstate commerce by electronic means by permitting and encouraging the continued expansion of electronic commerce through the operation of free market forces, and other purposes'', do pass with the following amendments:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Electronic Signatures in Global and National Commerce Act''.

TITLE I—VALIDITY OF ELECTRONIC RECORDS AND SIGNATURES FOR COMMERCE

SEC. 101. GENERAL RULE OF VALIDITY.

(a) GENERAL RULE.—With respect to any contract, agreement, or record entered into or provided in, or affecting, interstate or foreign commerce, notwithstanding any statute, regulation, or other rule of law, the legal effect, validity, or enforceability of such contract, agreement, or record shall not be denied—

(1) on the ground that the contract, agreement, or record is not in writing if the contract, agreement, or record is an electronic record; or

(2) on the ground that the contract, agreement, or record is not signed or is not affirmed by a signature if the contract, agreement, or

record is signed or affirmed by an electronic signature.

(b) AUTONOMY OF PARTIES IN COMMERCE.—

(1) IN GENERAL.—With respect to any contract, agreement, or record entered into or provided in, or affecting, interstate or foreign commerce—

(A) the parties to such contract, agreement, or record may establish procedures or requirements regarding the use and acceptance of electronic records and electronic signatures acceptable to such parties;

(B) the legal effect, validity, or enforceability of such contract, agreement, or record shall not be denied because of the type or method of electronic record or electronic signature selected by the parties in establishing such procedures or requirements; and

(C) nothing in this section requires any party to use or accept electronic records or electronic signatures.

(2) CONSENT TO ELECTRONIC RECORDS.—Notwithstanding subsection (a) and paragraph (1) of this subsection—

(A) if a statute, regulation, or other rule of law requires that a record be provided or made available to a consumer in writing, that requirement shall be satisfied by an electronic record if—

(i) the consumer has affirmatively consented, by means of a consent that is conspicuous and visually separate from other terms, to the provision or availability (whichever is required) of such record (or identified groups of records that include such record) as an electronic record, and has not withdrawn such consent;

(ii) prior to consenting, the consumer is provided with a statement of the hardware and software requirements for access to and retention of electronic records; and

(iii) the consumer affirmatively acknowledges, by means of an acknowledgement that is conspicuous and visually separate from other terms, that—

(I) the consumer has an obligation to notify the provider of electronic records of any change in the consumer's electronic mail address or other location to which the electronic records may be provided; and

(II) if the consumer withdraws consent, the consumer has the obligation to notify the provider to notify the provider of electronic records of the electronic mail address or other location to which the records may be provided; and

(B) the record is capable of review, retention, and printing by the recipient if accessed using the hardware and software specified in the statement under subparagraph (A)(ii) at the time of the consumer's consent; and

(C) if such statute, regulation, or other rule of law requires that a record be retained, that requirement shall be satisfied if such record complies with the requirements of subparagraphs (A) and (B) of subsection (c)(1).

(c) RETENTION OF CONTRACTS, AGREEMENTS, AND RECORDS.—

(1) ACCURACY AND ACCESSIBILITY.—If a statute, regulation, or other rule of law requires that a contract, agreement, or record be in writing or be retained, that requirement is met by retaining an electronic record of the information in the contract, agreement, or record that—

(A) accurately reflects the information set forth in the contract, agreement, or record after it was first generated in its final form as an electronic record; and

(B) remains accessible, for the period required by such statute, regulation, or rule of law, for later reference, transmission, and printing.

(2) EXCEPTION.—A requirement to retain a contract, agreement, or record in accordance with paragraph (1) does not apply to any information whose sole purpose is to enable the contract, agreement, or record to be sent, communicated, or received.

(3) ORIGINALS.—If a statute, regulation, or other rule of law requires a contract, agreement, or record to be provided, available, or retained in its original form, or provides consequences if the contract, agreement, or record is not provided, available, or retained in its original form, that statute, regulation, or rule of law is satisfied by an electronic record that complies with paragraph (1).

(4) CHECKS.—If a statute, regulation, or other rule of law requires the retention of a check, that requirement is satisfied by retention of an electronic record of all the information on the front and back of the check in accordance with paragraph (1).

(d) ABILITY TO CONTEST SIGNATURES AND CHARGES.—Nothing in this section shall be construed to limit or otherwise affect the rights of any person to assert that an electronic signature is a forgery, is used without authority, or otherwise is invalid for reasons that would invalidate the effect of a signature in written form. The use or acceptance of an electronic record or electronic signature by a consumer shall not constitute a waiver of any substantive protections afforded consumers under the Consumer Credit Protection Act.

(e) SCOPE.—This Act is intended to clarify the legal status of electronic records and electronic signatures in the context of writing and signing requirements imposed by law. Nothing in this Act affects the content or timing of any disclosure required to be provided to any consumer under any statute, regulation, or other rule of law.

SEC. 102. AUTHORITY TO ALTER OR SUPERSEDE GENERAL RULE.

(a) PROCEDURE TO ALTER OR SUPERSEDE.—Except as provided in subsection (b), a State statute, regulation, or other rule of law may modify, limit, or supersede the provisions of section 101 if such statute, regulation, or rule of law—

(1)(A) constitutes an enactment or adoption of the Uniform Electronic Transactions Act as reported to the State legislatures by the National Conference of Commissioners on Uniform State Laws; or

(B) specifies the alternative procedures or requirements for the use or acceptance (or both) of electronic records or electronic signatures to establish the legal effect, validity, or enforceability of contracts, agreements, or records; and

(2) if enacted or adopted after the date of the enactment of this Act, makes specific reference to this Act.

(b) LIMITATIONS ON ALTERATION OR SUPERSESSION.—A State statute, regulation, or other rule of law (including an insurance statute, regulation, or other rule of law), regardless of its date of the enactment or adoption, that modifies, limits, or supersedes section 101 shall not be effective to the extent that such statute, regulation, or rule—

(1) discriminates in favor of or against a specific technology, process, or technique of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures;

(2) discriminates in favor of or against a specific type or size of entity engaged in the business of facilitating the use of electronic records or electronic signatures;

(3) is based on procedures or requirements that are not specific or that are not publicly available; or

(4) is otherwise inconsistent with the provisions of this title.

(c) EXCEPTION.—Notwithstanding subsection (b), a State may, by statute, regulation, or rule of law enacted or adopted after the date of the enactment of this Act, require specific notices to be provided or made available in writing if such notices are necessary for the protection of the public health or safety of consumers. A consumer may not, pursuant to section 101(b)(2), consent to the provision or availability of such notice solely as an electronic record.

SEC. 103. SPECIFIC EXCLUSIONS.

(a) EXCEPTED REQUIREMENTS.—The provisions of section 101 shall not apply to a contract, agreement, or record to the extent it is governed by—

(1) a statute, regulation, or other rule of law governing the creation and execution of wills, codicils, or testamentary trusts;

(2) a statute, regulation, or other rule of law governing adoption, divorce, or other matters of family law;

(3) the Uniform Commercial Code, as in effect in any State, other than sections 1-107 and 1-206 and Articles 2 and 2A;

(4) any requirement by a Federal regulatory agency or self-regulatory organization that records be filed or maintained in a specified standard or standards (including a specified format or formats), except that nothing in this paragraph relieves any Federal regulatory agency of its obligations under the Government Paperwork Elimination Act (title XVII of Public Law 105–277);

(5) the Uniform Anatomical Gift Act; or

(6) the Uniform Health-Care Decisions Act.

(b) ADDITIONAL EXCEPTIONS.—The provisions of section 101 shall not apply to—

(1) any contract, agreement, or record entered into between a party and a State agency if the State agency is not acting as a market participant in or affecting interstate commerce;

(2) court orders or notices, or official court documents (including briefs, pleadings, and other writings) required to be executed in connection with court proceedings; or

(3) any notice concerning—

(A) the cancellation or termination of utility services (including water, heat, and power);

(B) default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, a primary residence of an individual; or

(C) the cancellation or termination of health insurance or benefits or life insurance benefits (excluding annuities).

SEC. 104. STUDY.

(a) FOLLOWUP STUDY.—Within 5 years after the date of the enactment of this Act, the Secretary of Commerce, acting through the Assistant Secretary for Communications and Information, shall conduct an inquiry regarding any State statutes, regulations, or other rules of law enacted or adopted after such date of the enactment pursuant to section 102(a), and the extent to which such statutes, regulations, and rules comply with section 102(b).

(b) REPORT.—The Secretary shall submit a report to the Congress regarding the results of such inquiry by the conclusion of such 5-year period.

(c) ADDITIONAL STUDY OF DELIVERY.—Within 18 months after the date of the enactment of this Act, the Secretary of Commerce shall conduct an inquiry regarding the effectiveness of the delivery of electronic records to consumers using electronic mail as compared with delivery of written records via the United States Postal Service and private express mail services. The Secretary shall submit a report to the Congress regarding the results of such inquiry by the conclusion of such 18-month period.

SEC. 105. DEFINITIONS.

For purposes of this title:

(1) ELECTRONIC RECORD.—The term ''electronic record'' means a writing, document, or other record created, stored, generated, received, or communicated by electronic means.

(2) ELECTRONIC SIGNATURE.—The term ''electronic signature'' means information or data in electronic form, attached to or logically associated with an electronic record, and executed or adopted by a person or an electronic agent of a person, with the intent to sign a contract, agreement, or record.

(3) ELECTRONIC.—The term ''electronic'' means of or relating to technology having electrical, digital, magnetic, optical, electromagnetic, or similar capabilities regardless of medium.

(4) ELECTRONIC AGENT.—The term ''electronic agent'' means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records in whole or in part without review by an individual at the time of the action or response.

(5) RECORD.—The term ''record'' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(6) FEDERAL REGULATORY AGENCY.—The term ''Federal regulatory agency' means an agency, as that term is defined in section 552(f) of title 5, United States Code, that is authorized by Federal law to impose requirements by rule, regulation, order, or other legal instrument.

(7) SELF-REGULATORY ORGANIZATION.—The term ''self-regulatory organization'' means an organization or entity that is not a Federal regulatory agency or a State, but that is under the supervision of a Federal regulatory agency and is authorized under Federal law to adopt and administer rules applicable to its members that are enforced by such organization or entity, by a Federal regulatory agency, or by another self-regulatory organization.

TITLE II—DEVELOPMENT AND ADOPTION OF ELECTRONIC SIGNATURE PRODUCTS AND SERVICES

SEC. 201. TREATMENT OF ELECTRONIC SIGNATURES IN INTERSTATE AND FOREIGN COMMERCE.

(a) INQUIRY REGARDING IMPEDIMENTS TO COMMERCE.—

(1) INQUIRIES REQUIRED.—Within 180 days after the date of the enactment of this Act, and biennially thereafter, the Secretary of Commerce, acting through the Assistant Secretary for Communications and Information, shall complete an inquiry to—

(A) identify any domestic and foreign impediments to commerce in electronic signature products and services and the manners in which and extent to which such impediments inhibit the development of interstate and foreign commerce;

(B) identify constraints imposed by foreign nations or international organizations that constitute barriers to providers of electronic signature products or services; and

(C) identify the degree to which other nations and international organizations are complying with the principles in subsection (b)(2).

(2) SUBMISSION.—The Secretary shall submit a report to the Congress regarding the results of each such inquiry within 90 days after the conclusion of such inquiry. Such report shall include a description of the actions taken by the Secretary pursuant to subsection (b) of this section.

(b) PROMOTION OF ELECTRONIC SIGNATURES.—

(1) REQUIRED ACTIONS.—The Secretary of Commerce, acting through the Assistant Secretary for Communications and Information, shall promote the acceptance and use, on an international basis, of electronic signatures in accordance with the principles specified in paragraph (2) and in a manner consistent with section 101 of this Act. The Secretary of Commerce shall take all actions necessary in a manner consistent with such principles to eliminate or reduce, to the maximum extent possible, the impediments to commerce in electronic signatures, including those identified in the inquiries under subsection (a) for the purpose of facilitating the development of interstate and foreign commerce.

(2) PRINCIPLES.—The principles specified in this paragraph are the following:

(A) Free markets and self-regulation, rather than Government standard-setting or rules, should govern the development and use of electronic records and electronic signatures.

(B) Neutrality and nondiscrimination should be observed among providers of and technologies for electronic records and electronic signatures.

(C) Parties to a transaction should be permitted to establish requirements regarding the use of electronic records and electronic signatures acceptable to such parties.

(D) Parties to a transaction—

(i) should be permitted to determine the appropriate authentication technologies and implementation models for their transactions, with assurance that those technologies and implementation models will be recognized and enforced; and

(ii) should have the opportunity to prove in court or other proceedings that their authentication approaches and their transactions are valid.

(E) Electronic records and electronic signatures in a form acceptable to the parties should not be denied legal effect, validity, or enforceability on the ground that they are not in writing.

(F) De jure or de facto imposition of standards on private industry through foreign adoption of regulations or policies with respect to electronic records and electronic signatures should be avoided.

(G) Paper-based obstacles to electronic transactions should be removed.

(c) CONSULTATION.—In conducting the activities required by this section, the Secretary shall consult with users and providers of electronic signature products and services and other interested persons.

(d) PRIVACY.—Nothing in this section shall be construed to require the Secretary or the Assistant Secretary to take any action that would adversely affect the privacy of consumers.

(e) DEFINITIONS.—As used in this section, the terms ''electronic record'' and ''electronic signature'' have the meanings provided in section 104 of the Electronic Signatures in Global and National Commerce Act.

TITLE III—USE OF ELECTRONIC RECORDS AND SIGNATURES UNDER FEDERAL SECURITIES LAW

SEC. 301. GENERAL VALIDITY OF ELECTRONIC RECORDS AND SIGNATURES.

Section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c) is amended by adding at the end the following new subsection:

''(h) REFERENCES TO WRITTEN RECORDS AND SIGNATURES.—

''(1) GENERAL VALIDITY OF ELECTRONIC RECORDS AND SIGNATURES.—Except as otherwise provided in this subsection—

''(A) if a contract, agreement, or record (as defined in subsection (a)(37)) is required by the securities laws or any rule or regulation thereunder (including a rule or regulation of a self-regulatory organization), and is required by Federal or State statute, regulation, or other rule of law to be in writing, the legal effect, validity, or enforceability of such contract, agreement, or record shall not be denied on the ground that the contract, agreement, or record is not in writing if the contract, agreement, or record is an electronic record;

''(B) if a contract, agreement, or record is required by the securities laws or any rule or regulation thereunder (including a rule or regulation of a self-regulatory organization), and is required by Federal or State statute, regulation, or other rule of law to be signed, the legal effect, validity, or enforceability of such contract, agreement, or record shall not be denied on the ground that such contract, agreement, or record is not signed or is not affirmed by a signature if the contract, agreement, or record is signed or affirmed by an electronic signature; and

''(C) if a broker, dealer, transfer agent, investment adviser, or investment company enters into a contract or agreement with, or accepts a record from, a customer or other counterparty, such broker, dealer, transfer agent, investment adviser, or investment company may accept and rely upon an electronic signature on such contract, agreement, or record, and such electronic signature shall not be denied legal effect, validity, or enforceability because it is an electronic signature.

''(2) IMPLEMENTATION.—

''(A) REGULATIONS.—The Commission may prescribe such regulations as may be necessary to carry out this subsection consistent with the public interest and the protection of investors.

''(B) NONDISCRIMINATION.—The regulations prescribed by the Commission under subparagraph (A) shall not—

''(i) discriminate in favor of or against a specific technology, method, or technique of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures; or

''(ii) discriminate in favor of or against a specific type or size of entity engaged in the business of facilitating the use of electronic records or electronic signatures.

''(3) EXCEPTIONS.—Notwithstanding any other provision of this subsection—

''(A) the Commission, an appropriate regulatory agency, or a self-regulatory organization may require that records be filed or maintained in a specified standard or standards (including a specified format or formats) if the records are required to be submitted to the Commission, an appropriate regulatory agency, or a self-regulatory organization, respectively, or are required by the Commission, an appropriate regulatory agency, or a self-regulatory organization to be retained; and

''(B) the Commission may require that contracts, agreements, or records relating to purchases and sales, or establishing accounts for conducting purchases and sales, of penny stocks be manually signed, and may require such manual signatures with respect to transactions in similar securities if the Commission determines that such securities are susceptible to fraud and that such fraud would be deterred or prevented by requiring manual signatures.

''(4) RELATION TO OTHER LAW.—The provisions of this subsection apply in lieu of the provisions of title I of the Electronic Signatures in Global and National Commerce Act to a contract, agreement, or record (as defined in subsection (a)(37)) that is required by the securities laws.

''(5) SAVINGS PROVISION.—Nothing in this subsection applies to any rule or regulation under the securities laws (including a rule or regulation of a self-regulatory organization) that is in effect on the date of the enactment of the Electronic Signatures in Global and National Commerce Act and that requires a contract, agreement, or record to be in writing, to be submitted or retained in original form, or to be in a specified standard or standards (including a specified format or formats).

''(6) DEFINITIONS.—As used in this subsection:

''(A) ELECTRONIC RECORD.—The term 'electronic record' means a writing, document, or other record created, stored, generated, received, or communicated by electronic means.

''(B) ELECTRONIC SIGNATURE.—The term ''electronic signature'' means information or data in electronic form, attached to or logically associated with an electronic record, and executed or adopted by a person or an electronic agent of a person, with the intent to sign a contract, agreement, or record.

''(C) ELECTRONIC.—The term 'electronic' means of or relating to technology having electrical, digital, magnetic, optical, electromagnetic, or similar capabilities regardless of medium.''.

Amend the title so as to read ''An Act to facilitate the use of electronic records and signatures in interstate or foreign commerce.''.

Mr. LOTT. Mr. President, I ask unanimous consent the Senate disagree to the amendments of the House, agree to the request for a conference with the House, and the Chair be authorized to appoint conferees on the part of the Senate.

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

The Presiding Officer (Mr. L. CHAFEE) appointed, from the Committee on Commerce, Science, and Transportation, Senators JOHN MCCAIN, CONRAD BURNS, TED STEVENS, SLADE GORTON, KAY BAILEY HUTCHISON, SPENCER ABRAHAM, ERNEST F. HOLLINGS, DANIEL K. INOUYE, JOHN D. ROCKEFELLER, IV, JOHN F. KERRY, and RON WYDEN;

From the Committee on Banking, Housing, and Urban Affairs for items within their jurisdiction, Senators PHIL GRAMM, ROBERT F. BENNETT, and PAUL S. SARBANES;

From the Committee on the Judiciary for items within their jurisdiction, Senators ORRIN G. HATCH, STROM THURMOND, and PATRICK J. LEAHY conferees on the part of the Senate.

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DIGITAL SIGNATURE LEGISLATION

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the following letter, signed by 45 members of the Democratic Caucus, be printed in the RECORD. Moreover, I would like to thank my colleagues, Senator SARBANES, ranking member of the Banking Committee, and Senator LEAHY, ranking member of the Judiciary Committee, for their assistance in the preparation for the conference on S. 761, the digital signature bill.

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

U.S. SENATE,
Washington, DC, March 28, 2000.

Members of the Conference Committee on Electronic Signature Legislation United States Congress.

DEAR CONFEREE: We are writing to express our strong support for legislation that will ensure the electronic marketplace functions effectively for both businesses and consumers. We all supported S. 761, the ''Millennium Digital Commerce Act,'' as it passed the Senate on November 19, 1999. As that bill proceeds to conference, we continue to believe that it is important to remove unintended barriers to electronic commerce. We must provide certainty regarding the legality of electronic transactions which spur economic growth and provide many benefits to consumers.

We also want to ensure that any new law would provide consumer protections equivalent to those currently required for paper transactions, and would not facilitate predatory or unlawful practices. The electronic world should be no less safe for American consumers than the paper world.

According to a recent Commerce Department report entitled *Falling Through the Net*, more than 70 percent of American households do not have access to the Internet. In enacting legislation to facilitate electronic commerce, we must ensure that we do not widen the ''digital divide,'' to the disadvantage of the majority of Americans.

We must ensure that consumer protections established over several decades are not inadvertently made ineffective by the transition to electronic transactions. We believe that the legislation produced by your conference committee must incorporate the following principles in order for us to support it:

Ensure effective consumer consent to the replacement of paper notices with electronic notices.

Ensure that electronic records are accurate, and relevant parties can retain and access them.

Enhance legal certainty for electronic signatures and records and avoid unnecessary litigation by authorizing regulators to provide interpretive guidance.

Avoid unintended consequences in areas outside the scope of the bill by providing clear federal regulatory authority for records not covered by the bill's ''consumer'' provisions.

Avoid facilitating predatory or unlawful practices.

Attached is a more detailed description of these principles.

The conference committee has the opportunity to write the ground rules for the transition of our economy from paper-based transactions to electronic transactions. This transition offers great potential benefits for both business and consumers, but must be done in a way that preserves basic consumer protections and ensures the confidentiality and security of such transactions.

Sincerely,

Patrick Leahy, Paul Sarbanes, Tom Daschle, Chris Dodd, Max Cleland, John Edwards, Harry Reid, Daniel K. Akaka, Ernest F. Hollings, Ron Wyden, John F. Kerry, Tom Harkin, Charles E. Schumer, Frank R. Lautenberg, Barbara A. Mikulski, Joseph R. Biden, Jr., Jay Rockefeller, J. Robert Kerrey, Richard J. Durbin, Barbara Boxer, Carl Levin, John B. Breaux, Daniel K. Inouye, Mary L. Landrieu, Max Baucus, Richard H. Bryan, Bob Graham, Jack Reed, Tim Johnson, Evan Bayh, Joseph I. Lieberman, Jeff Bingaman, Russell D. Feingold, Dianne Feinstein, Chuck Robb, Byron L. Dorgan, Paul Wellstone, Patty Murray, Daniel Patrick Moynihan, Ted Kennedy, Herb Kohl, Robert Torricelli, Blanche L. Lincoln, Kent Conrad, Robert C. Byrd.

BASIC CONSUMER PROTECTION PRINCIPLES FOR ELECTRONIC SIGNATURE LEGISLATION

1. Ensure Effective Consumer Consent to the Replacement of Paper Notices with Electronic Notices.

The final bill must include effective consumer consent provisions that provide the following protections:

Consumer consent must involve a demonstration that a consumer will actually have the capacity to receive and read electronic notices.

Consumers must be notified of their rights, including any right to receive notices on paper, a description of the types of records covered, and their right to revert to paper records (or clear explanation that the option will not be available because of the purely on-line nature of the business).

Consumer consent must be reconfirmed if a change in technology by business results in a material risk that a consumer will be unable to receive electronic records.

Consumers must be ensured that electronic delivery of notices will have substantially equivalent reliability as paper delivery.

Consumer privacy must be protected by requiring that the provider of the electronic record shall take reasonable steps to ensure confidentiality and security.

2. Ensure that Electronic Records are Accurate, and That Relevant Parties Can Access and Retain Them.

The legislation must require that, in order to meet record delivery and retention requirements under existing consumer protection laws, businesses must take reasonable precautions to preserve the accuracy and integrity of electronic records. In addition, all parties entitled to a copy of a notice or disclosure by law or regulation should be able to access and retain an accurate copy of that record for later reference and settlement of disputes.

3. Enhance Legal Certainty for Electronic Signatures and Records.

The legislation must provide clear interpretive authority to the regulatory agencies responsible for implementing the statutes modified by the legislation. Failure to provide such authority will create significant business uncertainty about the requirements for compliance with the law, which in turn might lead to litigation. Agencies may also be unable to stop abusive practices and preserve consumer confidence in on-line transactions without such authority. This authority would not give agencies the ability to override any of the bill's requirements, only to clarify how they apply in specific circumstances.

4. Avoid Unintended Consequences in Areas Outside the Scope of the Bill.

The legislation must provide clear federal regulatory authority for records not covered by the bill's consumer provisions, including authority to exempt requirements from the bill's provisions if necessary. The broad scope of the legislation may have unintended consequences for laws and regulations governing ''records'' outside its intended focus on business-to-consumer and business-to-business transactions. For example, the bill could affect rules on the posting of workplace safety notices. Protections must be provided against such unintended consequences of the legislation.

5. Avoid Facilitating Predatory or Unlawful Practices.

The legislation must provide adequate protection against predatory or unlawful practices.

Mr. LEAHY. Mr. President, I am pleased that my colleagues on the other side of the aisle have worked out their problems and enabled the Senate, at last, to appoint conferees on S. 761. I co-authored S. 761 as it passed the Senate, and I look forward to working as a conferee to ensure that the final conference report respects the principles that this body endorsed when it passed that legislation by unanimous consent last year. The letter to conferees dated March 28, 2000, signed by all 45 Democratic Senators, reminds us of those principles.

I am only one conferee among 17 but working with the other 6 Democratic Senate conferees and the 10 Republican Senate conferees. I will endeavor to encourage electronic commerce with balance, fairness, and due regard for consumer protection.

The PRESIDING OFFICER. The Senator from Utah.

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ELIAN GONZALEZ

Mr. HATCH. Mr. President, I rise this morning to voice my deep concern over the developing situation in Miami involving this young boy, Elian Gonzalez.

I do not rise today to make legal or policy arguments regarding the events that have transpired thus far, although I have strongly held views on those matters. Rather, I rise to implore—yes, implore—the Justice Department and the Clinton Administration to exercise restraint in how they proceed.

For reasons I fail to understand, this Administration yesterday significantly ratcheted up the stakes in this matter, and unnecessarily turned this into a crisis situation by threatening to involuntarily and forcibly remove this