the 104th Congress, the Senate is shirking its duty. That is wrong and should end. These are the nominations that the Senate on which the Senate should be working toward action.

I understand that nominations are not considered in lockstep order based on the date of receipt. I understand and respect the prerogatives of the majority party and the Republican leader. I do not want to oppose any nomination on the calendar and only ask that the Senate be fair to these other nominees, as well. Nominees like Judge Richard Paez and Marsha Berzon should be voted on up or down by the Senate. We are asking and have been asking the Republican leadership to schedule votes on those nominations so that action on all the nominations can move forward.

I know that there were no objections on the Democratic side of the aisle to the three judicial nominations that the Majority Leader included in his proposal last night. No Democrat has a hold on the nominations of Judge Florence-Marie Cooper, Barbara Lynn or Ronald Gould. No Democrat has any objection to proceeding to confirm by voice vote or to proceed to roll call votes on these nominations. No Democratic Senator has any objection to proceeding to confirm by voice vote or to proceed to rollcall votes on any of the 9 judicial nominations on the Senate's executive calendar. What we do ask is that Judge Paez and Marsha Berzon not be left on the calendar without a vote at the end of another session of Congress. We have been unable even to obtain a commitment from the Majority Leader to schedule a fair up or down vote on these nominations at any time in the future. We respectfully request his help in scheduling such action by the Senate.

IN MEMORY OF R. DUFFY WALL

Mr. BURNS. Mr. President, this has not been a good week—losing a friend and colleague; Payne Stewart, and, yes, another friend here in this town who had a government relations job.

We often hear the word ''lobbyist'' put in a negative tone, but this was a man who built a reputation of integrity and honesty in government relations.

This week, cancer claimed R. Duffy Wall. He died at his home on the Eastern Shore. He was friend and mentor.

You know what we would be without the folks who work in different areas of American life who represent that way of life to the Congress of the United States. We are not all wise. We do not know everything about everything. We need help. Duffy Wall was such a person—honest, straight shooter, a friend, dead at age 57, far too young. We will not get to use his services and wisdom anymore either.

I could talk longer about these friends. This has been a bad week, especially losing our Senator and losing a person very close to us.

Mr. President, I ask unanimous consent that the notes on Mr. Wall and his obituary be printed in the RECORD.

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

Washington, DC, October 25, 1999.

Following a long battle against lung cancer, R. Duffy Wall, 57, died yesterday at his home on the Eastern Shore—his wife Sharon was by his side. 'Duffy' as he was known by his many friends was a native of Louisiana who came to Washington in the 1970's and spent his entire career in the public policy arena. Known for his humor and ability to advise and ''cajole'' Members of Congress and clients on the intricacies of legislation, he was highly respected and admired by the powerful and the not-so-powerful alike.

In 1982, Mr. Wall founded R. Duffy Wall & associates providing lobbying and government relations services to a broad range of corporate clients. Under Mr. Wall's leadership, the firm grew into one of the Capital's most admired and successful lobbying operations attracting some of America's most prestigious companies and associations as clients. In 1998, the company was acquired by Fleishman-Hillard, an international communications company headquartered in St. Louis, Missouri.

Bill Brewster, the former Congressman from Oklahoma, who assumed the leadership of the company in 1998 and became CEO in 1999, said of Mr. Wall, ''Duffy was a friend, advisor, and mentor to all of us for many years. He will be missed very much by everyone in the government relations and political community, and he will always remain the faithful voice of encouragement to hunters in the field.''

An avid sportsman, Mr. Wall was as comfortable staling woodland paths and fencerows in pursuit of game and fowl as he was walking the halls of Congress.

In accordance with Duffy's wishes, the funeral will be limited to his family and there will be no memorial service. Those who wish to remember him are encouraged to send contributions in lieu of flowers to:

MD Anderson Cancer Center, Foundation of America, R. Duffy Wall Lung Cancer Program, Cancer Research Prgm., P.O. Box 297153, Houston, TX 77297; or Cancer Research, R. Duffy Wall Lung, 1600 Duke Street, Suite 110, Alexandria, VA 22314.

He is survived by his wife Sharon Borg Wall; a daughter, Catherine Wall Montgomery; a son, Howard Wall; his mother Juanita F. Wall; two brothers and three grandchildren.

MILLENNIUM DIGITAL COMMERCE ACT

Mr. LEAHY. Mr. President, about two months ago, Senator ABRAHAM and I began holding a series of meetings involving industry and consumer representatives to work out a bill that would permit and encourage the continued expansion of electronic commerce, and promote public confidence in its integrity and reliability. Together, we solicited and received technical assistance from the Department of Commerce and the Federal Trade Commission. In late September, we put the finishing touches on a Leahy-Abraham substitute to S. 761.

On Tuesday night, after most members had left for the day, Senator ABRAHAM went to the floor and propounded a unanimous consent on a very different substitute to S. 761. Because I was not able to respond fully to his comments the other night, I would like to do so now.

At the outset, let me say that I support the passage of federal legislation in this area. In particular, we need to ensure that contracts are not denied validity that they otherwise have simply because they are in electronic form or signed electronically.

As I have said many times, however, we must tread cautiously when legislating in cyberspace. Senator ABRAHAM's bill, S. 761, takes a sweeping approach, preempting countless laws and regulations, federal and state, that require contracts, records and signatures to be in traditional written form. My concern is that such a sweeping approach would radically undermine laws that are currently in place to protect consumers.

We are told that S. 761 will have tremendous benefits for ''the public.'' Who exactly is ''the public'' that will benefit from this legislation? Not consumers. The bill is strongly opposed by consumer organizations across the country.

Supporters of this bill say that consumers will benefit from S. 761 because it will permit them to contract electronically for goods and services, and to obtain electronic records of their transactions. I agree that consumers should be able to contract online, but that is not the issue. Consumers already can contract for most things online, as anyone who has heard of such businesses as ''amazon.com'' and ''ebay.com'' knows. The issue here is whether we are going to allow public interest protections now applicable to private paper transactions to be circumvented simply by conducting the same transaction electronically.

Let me tell you about an incident that occurred in my office just this week. An industry lobbyist called to ask for a copy of my recent floor statement regarding this legislation. We sent him a copy as an attachment to an e-mail. An hour later, the same lobbyist called back to say that he had received the e-mail, but could not read the attachment. So we e-mailed it to him again, this time using a different word processing format. The lobbyist called back a third time to say that he still could not read the statement, and would we please fax a copy to his office, which we did. This sort of thing happens every day in offices and homes across the country.

It was only after we sent the fax that it occurred to me that under this bill, the unfortunate caller would have been deemed to have received written notice of my floor statement, in duplicate no less, before it ever reached him in a form he could read. No great loss in the case of my floor statement, but swap a bank and a homeowner for the Senator and the lobbyist in this story, and a foreclosure notice for the floor statement, and you can begin to see the harm this legislation could cause to ordinary Americans on a regular basis.

Many fine and responsible companies have called my office over the last few months, to express support for one or another version of S. 761. I have no doubt that they and a great many other American businesses that respect and value their customers would benefit from federal e-commerce legislation and share the benefits with their consumers.

We must not forget, however, that the purpose of consumer protection legislation is not so much to reinforce the good business practices of the best businesses in our society, but rather to protect consumers from the abusive and fraudulent minority of businesses that will take any opportunity to use new technologies to prey on consumers. That is why we must keep the interests of consumers in mind. While I do not question in any way the good intentions of the industry representatives who support this bill, they do not have the duty that we in Congress do to represent the broader public interest.

In urging speedy passage of S. 761, Senator ABRAHAM pointed to ''the fact'' that it passed the Commerce Committee unanimously, and ''the fact'' that the President endorsed it. The fact is, the bill that Senator ABRAHAM asked us to pass earlier this week is not the same bill that the Commerce Committee reported in June.

For one thing, it includes a new and complex provision regarding what it calls ''transferable records,'' that has never been considered by any Committee of the House or Senate. The bill also contains a host of other new provisions and amendments, including provisions and amendments relating to agreements, admissibility of evidence, record retention, and checks.

Furthermore, this bill is far less respectful of the states than the Commerce-passed bill, which was itself unprecedentedly preemptive. This legislation should be an interim measure to ensure the validity of electronic agreements entered into before the states have a chance to enact the Uniform Electronic Transactions Act. Once the UETA is adopted by a state, the federal rule is unnecessary and should ''sunset.''

Unlike the Commerce-passed bill, the new S. 761 would maintain a strong federal hand in the commercial law of electronic signatures and electronic records within a state even after it adopts the UETA. This is true because the bill would lift its preemptive effect only to the extent that a state's UETA is consistent with the provisions of S. 761. The reformulation can have only one possible objective, which is to prevent states like Vermont or California or even Michigan from passing e-commerce legislation that is more protective of consumers than federal law.

That is why the bill is so strongly opposed by the States. The National Conference of State Legislatures writes that the latest version of S. 761 ''would eviscerate consumer protections which consumers now enjoy off-line and mandate how states are to transact business.'' The New Jersey Law Revision Commission, an agency of the New Jersey Legislature, writes that it ''vigorously opposes'' S. 761, calling it ''an unwarranted imposition on State law'' that ''would create more problems than it would solve.'' Other representatives of the States have expressed similar concerns.

To summarize, the Commerce Committee did not unanimously report this bill, nor did the Administration endorse it. Indeed, I doubt that anyone in the Administration set eyes on this bill before Monday, when it was filed as a substitute to S. 761.

Moreover, the Administration does not currently endorse even the more modest bill reported by the Commerce Committee. In a recent letter to the House Judiciary Committee regarding title I of H.R. 1714, which substantially resembles S. 761, the General Counsel of the Commerce Department noted that, at the time S. 761 was reported, the spillover effect of its provisions on electronic contracts on existing consumer protection and regulatory standards had not been identified. He concluded:

> Now that this effect has become clear, and it is equally clear that enactment of this measure is desired by some precisely because of this spillover effect, we [i.e., the Administration] must oppose these provisions as currently drafted.

The same letter states:

> Consumer protection is [an] important area where the public interest has been found to require government oversight. States, as well as the Federal government, must not be shackled in their ability to provide safeguards in this area. Yet this is precisely what this legislation would do.

The recently-filed substitute version of S. 761 would do the same.

I was surprised to hear Senator ABRAHAM say that his efforts to negotiate with those of us who had concerns about the bill had been ''unsuccessful.'' As I have already discussed, those negotiations were very successful. They produced a truly bipartisan bill that promoted e-commerce for the benefit of all Americans and not just special interests. It took many weeks of hard work to achieve that result.

I urge my colleagues to oppose the substitute for S. 761.

I also ask unanimous consent to have printed in the RECORD a letter from Federal Trade Commission to my office dated September 3, 1999, and a letter from the Commerce Department to Representative HYDE dated October 12, 1999.

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

UNITED STATES OF AMERICA,
FEDERAL TRADE COMMISSION,
Washington, DC, September 3, 1999.

Hon. PATRICK LEAHY,
U.S. Senate, Washington, DC.

DEAR SENATOR LEAHY: In response to your request, I am pleased to submit the views of the Federal Trade Commission on S. 761, the ''Third Millennium Digital Commerce Act,'' which was reported by the Commerce Committee on June 23, 1999. You have asked, in particular, whether the bill could undermine consumer protections in state and federal law, and how the bill might be improved.

We share the broad goals of S. 761, which are to promote the development of electronic commerce through the expanded use of electronic signatures and electronic agreements. As with other aspects of electronic commerce, these technologies hold possibility of reducing costs and expanding opportunities for consumers. Although the bill appears primarily focused on removing barriers to electronic commerce in business-to-business transactions, we have begun analyzing the possible impact of the bill on business-to-consumer transactions.

The bill's potential application to consumer transactions raises questions that should be addressed. For instance, would the bill preempt numerous state consumer protection laws? Would borrowers be bound by a contract requiring that they receive delinquency or foreclosure notices by electronic mail, even if they did not own a computer? Would consumers who had agreed to receive electronic communications be entitled to revert to paper communications if their computer breaks or becomes obsolete? Would consumers disputing an electronic signature have to hire an encryption expert to rebut a claim that they had ''signed'' an agreement when, in fact, they had not? What evidentiary value would an electronic agreement have if it could be easily altered electronically? It may be that with some clarification, these questions can easily be addressed.

We would be pleased to work with the Congress, industry and consumer representatives to craft provisions that would provide protections for consumers while allowing business-to-business commerce to proceed unimpeded.

By direction of the Commission.

C. LANDIS PLUMMER,
Acting Secretary.

GENERAL COUNSEL OF THE
U.S. DEPARTMENT OF COMMERCE,
Washington, DC, October 12, 1999.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This is to convey the views of the Administration regarding Title I of H.R. 1714, the ''Electronic Signatures in Global and National Commerce Act,'' as reported by your Subcommittee on Courts and Intellectual Property (''Subcommittee'').

We support the overall goal of H.R. 1714 of promoting a predictable, minimalist legal environment for electronic commerce, including the encouragement of prompt state adoption of uniform legislation assuring the legal effectiveness of electronic transactions and signatures. We also appreciate the desire and the work of the Subcommittee on Courts and Intellectual Property to put forward a bill that addresses the concerns of the Administration as explained in Commerce and Justice Department testimony before that Subcommittee.

In particular, we note that section 103 of the reported bill, titled ''Interstate Contract Certainty,'' is directed to ''any commercial transaction affecting interstate commerce'' and that ''transaction'' is defined to exclude activity involving federal or State governments as parties. We endorse these features of the bill, which make the scope of the legislation broad enough to encompass most day-to-day commercial electronic transactions without interfering with the orderly adoption by governments of electronic means for transacting their public business.

We also are pleased that the reported bill omits any provision for federal agency initiatives to enjoin state laws not conforming to the requirements of this statute.

We continue to support strongly the principles for the use of electronic signatures in international transactions set out in section 102. These are fully consistent with the principles we have been actively promoting internationally since July, 1997, when President Clinton and Vice President Gore issued the Framework for Global Electronic Commerce charging our Department to ''work with the private sector, state and local governments, and foreign governments to support the development, both domestically and internationally, of a uniform commercial legal framework that recognizes, facilitates, and enforces electronic transactions worldwide.''

We nevertheless believe that the bill, as reported, would still preempt state law unnecessarily, both in degree and duration; invalidate numerous state and federal laws and regulations designed to protect consumers and the general public; and otherwise create legal uncertainty where predictability is the goal. We therefore must strongly oppose the measure in its current form.

To begin with, we do not understand why it is necessary to override existing federal laws governing commercial transactions. The purpose of this legislation has always been explained as the elimination of antiquated requirements for physical contracts and pen-and-ink signatures. Because those legal principles are embodied in state law, it is understandable that some limited preemption of state law is necessary to accomplish that goal pending the States' adoption of the Uniform Electronic Transactions Act (UETA). The federal rules applicable to these transactions are grounded in regulatory obligations, not basic contract law principles. We do not believe it is appropriate to sweep away these requirements on an across-the-board basis. to the extent that federal regulatory rules need updating to address the new reality of electronic transactions, this should be done on a case-by-case basis, to ensure that the public policy concerns that underlie the existing measures are fully addressed in the electronic world. Accordingly, we believe only state law standards should be affected by federal legislation in this area.

Section 103 of H.R. 1714 as reported to your Committee continues to place significant, and we believe inappropriate, limits upon the States' ability to alter or supersede the federal rule of law that the bill would impose. As I indicated in my testimony before the Courts and Intellectual Property Subcommittee, this legislation should be limited to a temporary federal rule to ensure the validity of electronic agreements entered into before the States have a chance to enact the UETA. Once the UETA is adopted by a State, the federal rule is unnecessary, and it should ''sunset.'' The reported bill would maintain a strong federal hand in the commercial law of electronic signatures and records within a State even after it adopts the UETA. This is true because the bill would lift its preemptive effect only to the extent that the UETA ''as in effect in such State,'' or any other law of the State, is ''not inconsistent, in any significant manner'' with the provisions of this Act.

The pervasiveness and strength of this continuing federal influence over States' laws is shown by the broad and unqualified wording of some of the substantive provisions of section 103. For example, subsection 103(a)(3) provides: ''If a law requires a record to be in writing, or provides consequences if it is not, an electronic record satisfies the law.'' Similarly, subsection (a)(4) provides that wherever a law ''requires a signature, or provides consequences in the absence of a signature, the law is satisfied with respect to an electronic record if the electronic record includes an electronic signature,'' and subsection (a)(5) provides highly specific requirements for ensuring that a legal record-retention requirement will be satisfied by an electronic record. With such provisions in section 103, the bill's continuing preemption of all State laws which are ''not inconsistent in any significant manner'' with the provisions of this Act would perpetuate federal law as the core of the commercial law of electronic signatures and records in every state. As emphasized in our Department's testimony before the Subcommittee, deference to state law in the area of commercial transactions has been the hallmark of the legal system in this country. The reported bill remains inconsistent with this important tradition which has produced a system of commercial law widely considered the best in the world.

Subsections 103(a) (3), (4) and (5), which I have just mentioned, coupled with the broad party autonomy language of section 103(b), would also place excessive limits on governmental authority. In particular, these provisions would appear to preclude virtually any regulation of private parties' authentication of recordkeeping practices in the sphere of electronic commerce, as is common and recognized as appropriate with respect to paper-based transactions.* But these regulations, including consumer protection laws, laws governing financial transactions, and others, are essential to ensure that the public interest is protected.

For example, raising concerns similar to those noted in this Department's testimony on H.R. 1714, Banking Committee Chairman Leach recently wrote to Commerce Committee Chairman Bliley noting that the federal financial regulatory agencies have raised a concern about the language of the section of H.R. 1714 (section 103(b) of the version before your Committee) relating to the autonomy of parties to a contract to set their own requirements with respect to electronic records and signatures. Specifically, he noted the need to ensure that the bill's party autonomy provisions would not limit government authority to engage in limited regulation of authentication- or records-related matters in certain private party transactions in the public interest. We agree; for example, given the unqualified authorization provided by subsection 103(b) to private parties to determine the ''methods'' as well as the ''terms and conditions'' under which they will use and accept electronic signatures and records, banks would be free to adopt methods that could result in the absence of adequate records or sound authentications of transactions when the bank examiner arrives.

Chairman Leach also noted that the Federal Reserve Board has raised concerns regarding the application of H.R. 1714 to negotiable instruments, such as checks and notes. He pointed out that the National Conference of Commissioners on Uniform State Laws recognized some of these concerns and therefore excluded transactions covered by the Uniform Commercial Code from coverage under UETA. We agree with the concerns raised by Chairman Leach and believe that amendments or clarifications along the lines he has suggested continue to be needed in the context of H.R. 1714 as reported to your Committee.

Consumer protection is another important area where the public interest has been found to require government oversight. States, as well as the Federal government, must not be shackled in their ability to provide safeguards in this area. Yet this is precisely what this legislation would do.

Section 104, ''Study of Legal and Regulatory Barriers to Electronic Commerce,'' is consistent with the Administration's commitment to ensure the careful review of possible legal and regulatory barriers to electronic commerce. Indeed, this provision in the bill as reported focuses upon barriers to electronic commerce, as such, rather than more narrowly upon commerce in electronic signature products and services. We believe this focus is appropriate. However, to avoid duplication of agency reporting, we would recommend against inclusion of the Office of Management and Budget as an agency to receive initial agency reports under the provision.

In summary, we believe that the bill as reported by the Subcommittee addresses some important concerns of the Administration that were set out in our earlier testimony. However, H.R. 1714 in the form reported to your Committee retains significant flaws that would have to be addressed before the Administration could support the bill. We would be pleased to continue to work with your Committee on this important legislation.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

ANDREW J. PINCUS.

*These provisions are similar to some contained in S. 761, as reported by the Senate Commerce Committee. I expressed support for that measure because it ensured that contracts could not be invalidated because they were in electronic form or because they were signed electronically. At the time the bill was reported, the spillover effect of these provisions on existing consumer protection and regulatory standards had not been identified. Now that this effect has become clear, and it is equally clear that enactment of this measure is desired by some precisely because of this spillover effect, we must oppose these provisions as currently drafted.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting a treaty and sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

A REPORT RELATIVE TO THE CONTINUATION OF THE NATIONAL EMERGENCY WITH RESPECT TO SUDAN—MESSAGE FROM THE PRESIDENT—PM 69

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs.

To the Congress of the United States:

Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, prior to the