

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. INOUE, 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 CONFEREES: 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

boy from the place he calls home and to forcibly remove him from the family that has cared and sheltered him for four months.

And why? The Justice Department had previously indicated a willingness to allow the Miami family to pursue its legal avenues in federal court. This family is appealing the recent decision of the district court. That is not news, and should hardly come as a surprise to the Department. In fact, it is my understanding that the family has agreed to the Justice Department's request to try and expedite the appeal.

So why has the Administration manufactured this crisis and issued these threats and ultimatums? Why make these threats regarding this arbitrary, self-created and self-imposed deadline of Thursday morning at 9:00 a.m.?

I know that my colleagues have different views on the matter of whether Elian Gonzalez should be returned to Cuba or allowed to stay in our country. But I do not stand before you today to debate that matter.

Rather, I would hope we could all join in calling upon the Department of Justice and the Clinton Administration to calm down, exercise restraint, and stop acting to increase the tension of this delicate situation unnecessarily through arbitrary deadlines or threats of force.

I fail to see how these threats serve any useful purpose. Hasn't this young boy been through enough? Why does this Administration need to forcibly remove him from his home while the appeal process continues to run? Has Elian become an enemy of the United States of America? If not, why is the Administration treating him like a dangerous drug lord or a mass murderer?

Again, I implore this Justice Department and this Administration to calm down and exercise restraint. We need to find a way to diffuse this situation, not to further inflame it. And, we need to act in accordance with the values of our country—restraint, respect for law, and common sense. We should not be led to extremes merely to appease a foreign government. We will be fair and deliberate. But, we should not engage in ridiculous, overwrought measures. After all, this is not Cuba. This is the United States of America, and we have a young boy here. He ought to be treated with dignity and with respect by a government that does not act as a bully with no restraint whatsoever.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Texas.

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#### MARRIAGE TAX PENALTY

Mrs. HUTCHISON. Mr. President, I rise today to talk about the marriage tax penalty. We are trying not so much to give a tax cut to married couples but to make a tax correction. It is not the business of Government to say that when you are married your taxes should be higher. The Tax Code should be blind.

It should be fair to all. Any single person making \$35,000 a year marrying someone making \$35,000 a year should not automatically go into a higher tax bracket. In fact, under today's Tax Code, that is exactly what happens. It is one of the most egregious oversights of our tax system that we must address.

It is estimated that 21 million married couples pay a marriage penalty; about 48 percent of people in this country who are married pay a penalty for being married. The question is, What can we do to correct that inequity? This is not just a tax cut. It is a tax correction.

Yesterday, Senator ROTH revealed his plan that will go to the Finance Committee for markup, hopefully, tomorrow. It is a very solid beginning. His plan, first and foremost, does something that will affect every single married couple: It doubles the standard deduction.

Today, the standard deduction is \$7,350 for a married couple. It is \$4,400 for singles. One would think a married couple would get \$8,800. That is not the case. They get \$7,350. Regardless of the tax bracket, there is a marriage tax penalty from the standard deduction. Senator ROTH's bill doubles the standard deduction next year.

Second, the bill starts with the lowest tax bracket, the 15-percent bracket. Over a 6-year period, starting in 2000, that bracket will be doubled for married couples. This is an \$8,650 increase that allows people to continue paying in the 15-percent level for \$8,650 more. Basically, that means if someone today is making up to \$43,000 as a married couple, they are in the 15-percent bracket. We raise that to \$52,500. As a married couple making about \$26,000 a year, they will stay in the 15-percent bracket and will not have that penalty.

It is important for people to know that everyone pays up to the \$52,000 in the 15-percent bracket. Even if you go up to the 28-percent bracket or the 36-percent bracket, you will also get that 15-percent bracket relief.

It was my hope to double the 28-percent bracket, as well, because this is where most people get hit the hardest. A policeman who marries a schoolteacher gets hit in that 28-percent bracket. They are making approximately \$30,000 each. They would not be fully covered under the bill that will go to markup.

There will be opportunities to increase that bracket to 28 percent, which is what we hope to do. We want to go up to about \$120,000 in joint income to do away with that penalty for married couples. We will take the 28-percent bracket up to about \$126,000. A 28-percent tax bracket is almost a third of what a person makes, so with salaries of \$40,000 or \$50,000, it is a pretty big hit, especially if you have children and are trying to do the extras for their education.

We have the 15-percent bracket doubling, starting in 2000. We want to

make that 28 percent, but even if we can do the 15 percent, it is certainly a step in the right direction, saying to people they should not be penalized because they chose to get married. The penalty is not small. The average is about \$1,400 more that people pay. If they are making \$28,000 a year or \$40,000 a year and have to pay \$1,400 more in taxes, that is a lot of money, money that could be saved for the first downpayment on a house. It is money that could be put on car payments, mortgage payments, or a family vacation.

This is the time in people's lives when they need the money the most, when they are a young couple, just beginning. They do not have a nest egg yet. To tax them \$1,400 more a year is a heavy penalty. There is no reason for it. We should not make the choice for people that if they get married they must pay more taxes.

The alternative minimum tax is also reformed in Senator ROTH's plan. The alternative minimum tax is a tax that is levied on people. An alternative minimum tax is levied perhaps because too much of their income is tax free. This has begun to hit more and more people.

The alternative minimum tax has begun to hit people who make \$75,000 a year as married couples. This keeps them from having the \$500-per-child tax credit fully given; it keeps them from getting the Hope scholarship money fully given; it keeps them from having an adoption credit fully given. It takes away the value of those credits.

We say to people: You get a \$500-per-child tax credit because we want you to have more of the money you earn, but if you make over \$75,000 a year, we will take part of that credit away. We want to make those types of tax credits, the nonrefundable tax credits, whole for people, regardless of where they are in the system. We don't want the marriage tax penalty to encroach on that, as well. We are trying to exempt those nonrefundable tax credits from the AMT.

We also increase the earned-income tax credit for low-income couples, so if a person chooses to go to work and get off welfare, which is what we are encouraging them to do, we don't want to punish them by taking away their earned-income tax credit.

It is ironic that today we say to a married couple: You will pay more in taxes than if you had stayed single. We have a higher tax burden in our country today in peacetime than any time since World War II. We are trying to take away some of that tax burden on hard-working Americans. We find with many couples that both work because the tax burden is so high. They are trying to do extra things for their children. In order to meet all of their needs and the extra requirements they have for giving their children a good education, they are having to go to work. That second income is penalizing that spouse who decides to leave the home and go into the workplace.