

judges. By this time in 1994, a Democratic Senate had confirmed over 100 judges.

There are judicial emergencies vacancies all over the country. The Fifth Circuit Court of Appeals has had to declare that entire Circuit in an emergency. Its workload has gone up 65 percent in the last 9 years; but they are being forced to operate with almost one-quarter of their bench vacant. The Senate has not given any attention to the two nominees pending in Committee—either Enrique Moreno or Alston Johnson.

We had a similar emergency a year or so ago in the Second Circuit. We finally ended that crisis when we fought through secret Republican holds and got the Senate after 15 months to vote on the nomination of Judge Sonia Sotomayor. She was confirmed overwhelmingly.

At the time I was struck by an article by Paul Gigot in the Wall Street Journal, which explained why Judge Sotomayor was being held up—it was not because she was not qualified to serve on the Second Circuit but because some felt that she was so well qualified President Clinton might nominate her to the United States Supreme Court if a vacancy were to arise. Imagine that, anonymous holds to ensure that a superbly talented Hispanic woman judge not be seen as a good bet to nominate to the Supreme Court. I fear that the opposition to Marsha Berzon may partake of some of this kind of thinking. She is so well qualified, so clearly likely to be an outstanding judge on the Ninth Circuit, that perhaps some anonymous Republican Senators are afraid that she will be too good, that her opinions will be too well reasoned that her application of the law will be too sound.

Weeks ago the Majority Leader came to the floor and said that he would try to find a way to have the Paez and Berzon nominations considered by the Senate. I have tried to work with Majority Leader on all of these nominations. I would like to work with those Senators whom the Majority Leader is protecting from having to vote on the Paez and Berzon nominations, but I do not know who they are. Despite the policy announced at the beginning of this year doing away with “secret holds,” that is what Judge Paez and Marsha Berzon still confront as their nominations continue to be obstructed under a cloak of anonymity after 45 months and 21 months, respectively. That is wrong and unfair.

This continuing delay demeans the Senate, itself. I have great respect for this institution and its traditions. Still, I must say that this use of secret holds for extended periods that doom a nomination from ever being considered by the United States Senate is wrong and unfair and beneath us. Who is it that is afraid to vote on these nomina-

tions? Who is it that is hiding their opposition and obstruction of these nominees? After almost 4 years with respect to Judge Paez and almost 2 years with respect to Marsha Berzon, it is time for the Senate to vote up-or-down on these nominations.

The Senate should be fair and vote on these nominations. Anonymous Republican Senators are being unfair to the judicial nominees on the calendar. These qualified nominees are entitled to an up or down vote, too.

The Atlanta Constitution noted recently:

Two U.S. appellate court nominees, Richard Paez and Marsha Berzon, both of California, have been on hold for four years and 20 months respectively. When Democrats tried . . . to get their colleagues to vote on the pair at long last, the Republicans scuttled the maneuver. . . . This partisan stalling, this refusal to vote up or down on nominees, is unconscionable. It is not fair. It is not right. It is no way to run the federal judiciary. . . . This ideological obstructionism is so fierce that it strains our justice system and sets a terrible partisan example for years to come.

It is against this backdrop that I, again, ask the Senate to be fair to these judicial nominees and all nominees. For the last few years the Senate has allowed one or two or three secret holds to stop judicial nominations from even getting a vote. That is wrong.

The Washington Post has noted:

[T]he Constitution does not make the Senate's role in the confirmation process optional, and the Senate ends up abdicating responsibility when the majority leader denies nominees a timely vote. All the nominees awaiting floor votes . . . should receive them immediately.

The Florida Sun-Sentinel has written:

The “Big Stall” in the U.S. Senate continues, as senators work slower and slower each year in confirming badly needed federal judges. . . . This worsening process is inexcusable, bordering on malfeasance in office, especially given the urgent need to fill vacancies on a badly undermanned federal bench. . . . The stalling, in many cases, is nothing more than a partisan political dirty trick.

Nominees deserve to be treated with dignity and dispatch—not delayed for 2 and 3 and 4 years. I continue to urge the Republican Senate leadership to proceed to vote on the nominations of Judge Richard Paez and Marsha Berzon. There was never a justification for the Republican majority to deny these judicial nominees a fair up or down vote. There is no excuse for their continuing failure to do so.

Acting to fill judicial vacancies is a constitutional duty that the Senate—and all of its members—are obligated to fulfill. In its unprecedented slowdown in the handling of nominees since 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