

Americans who have gone on the Federal Trade Commission's web site and signed up to say to telemarketers they don't want to be called.

I would like to read into the RECORD a statement of FTC Chairman Timothy Muris. He said:

Late last year, the Federal Commission issued rules creating the National Do Not Call Registry under the Telemarketing and Consumer Fraud and Abuse Prevention Act. On February 13, 2003 the Congress passed the Do Not Call Implementation Act, which authorized the FTC to collect fees from sellers and telemarketers to "implement and enforce the provisions relating to the 'do-not-call' registry." The President signed this bill on March 11, 2003. Moreover, on February 20, 2003, the President signed the Omnibus Appropriations Act, which authorizes the FTC to "implement and enforce the do-not-call provisions of the Telemarketing Sales Rule."

Despite this clear legislative direction, the U.S. District Court for the Western District of Oklahoma has ruled that the FTC exceeded its authority in creating the National Do Not Call Registry.

This decision is clearly incorrect. We will seek every recourse to give American consumers a choice to stop unwanted telemarketing calls.

This registry is due to go into effect in a week. A Federal judge has essentially prevented it from going into effect. In a week, tens of millions of Americans who have registered their names not to be called by telemarketers are going to find out that it is all a myth. They are going to get called in any event. I think they are going to be very angry.

I also believe this decision strikes a blow against the basic privacy interests of millions of Americans. Presently, these people are subjected to unwanted marketing calls to their homes at all times of the day, including the dinner hour. The FTC's Registry will give Americans who want to avoid these unsolicited sales pitches an option to stop their telephone from ringing.

As I mentioned, tens of millions of Americans have registered more than 50 million phone numbers for this program. Ultimately, the Federal Trade Commission expects 60 percent of the Nation's households with approximately 60 million home phone lines to sign on to the registry. This registry is crucial because it puts consumers in charge of the number of telemarketing calls they receive. Telemarketers who disregard the Registry could be fined up to \$11,000 per call.

The district court today ruled that the Do Not Call Registry is "invalid"—that is the word the judge used in his decision—because it was created without congressional authority.

This conclusion I find surprising since Congress passed H.R. 395, the Do-Not-Call Implementation Act on February 13th of this year. The legislation clearly authorizes the Federal Trade Commission and the Federal Communications Commission to collect fees sufficient to implement the Registry. And the Appropriations Committee granted \$18 million for the program.

I also note that the FTC's rule came after the most extensive deliberations. The FTC announced its plan to proceed with the Registry on December 18, 2002, after receiving 64,000 comments. The overwhelming majority of these comments favored the creation of the Registry. Millions of Americans were promised protection from annoying, unwanted telemarketing calls starting October 1. They are truly going to be outraged by this.

There are two ways of going about this. The first is to let the FTC appeal the case, which they have just said they are going to be in the process of doing. The other is to perhaps unanimously adopt and pass legislation which clearly authorizes, specifically authorizes—and in bold letters authorizes so that no Federal judge can misunderstand it—and get this done as quickly as we can. I have asked my Judiciary counsel to prepare this legislation. We will be submitting it before the end of the day.

I would like to invite all of my colleagues to join as cosponsors. Then, hopefully, we will be able to move this through very quickly, particularly in view of the fact that we believed we did authorize it earlier, the President did sign it earlier this year, and we believed it was a concluded issue.

I ask unanimous consent to have printed in the RECORD the judgment of the Western District Court of Oklahoma which finds that the portion of the final amended rule that pertains to the National Do Not Call Registry is invalid.

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

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA
U.S. SECURITY, ET AL., PLAINTIFFS, VS.
FEDERAL TRADE COMMISSION, DEFENDANT
NO. CIV-03-122-W—JUDGMENT

Pursuant to the Order filed this date, the Court finds that judgment should be and is hereby entered as a matter of law in favor of the plaintiffs, U.S. Security, Chartered Benefit Services, Inc., Global Contact Services, Inc., InfoCision Management Corporation and Direct Marketing Association, Incorporated, on the plaintiffs' claims that that portion of the Final Amended Rule that pertains to the national do-not-call registry is invalid. The Court further finds that judgment should be and is hereby entered as a matter of law in favor of the defendant, Federal Trade Commission, on all remaining claims asserted by the plaintiffs.

Dated at Oklahoma City, Oklahoma, this 23rd, day of September, 2003.

Lee R. West, *United States District Judge.*

Mrs. FEINSTEIN. Madam President, I have concluded within the 10 minutes. I thank the Chair. I yield the floor.

Mr. COCHRAN. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. COCHRAN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2004—CONFERENCE REPORT

Mr. COCHRAN. Madam President, I ask unanimous consent that the Senate now proceed to the consideration of the conference report to accompany H.R. 2555.

The PRESIDING OFFICER. The assistant Democratic leader.

Mr. REID. Madam President, reserving the right to object, we have been in touch with Senator BYRD, who is co-manager of this bill, and he has no objection to proceeding to this conference report. He simply wants to be able to be heard prior to our scheduling a vote on adoption of the conference report.

I have no objection.

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

The report will be stated by title.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2555), making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2004, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate and agree to the same, with an amendment, and the Senate agree to the same, signed by a majority of the conferees on the part of both Houses.

The Senate proceeded to consider the conference report.

(The conference report is printed in the House proceedings of the RECORD of September 23, 2003.)

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Madam President, it is my honor and pleasure to present for the Senate's approval today the conference report on H.R. 2555, the fiscal year 2004 Homeland Security Appropriations Act. As all Senators know, this is an historic occasion. Not only is this the first appropriations bill for the new Department of Homeland Security, but it is also the first of the 13 fiscal year 2004 appropriations bill conference reports to be presented to the Senate.

The conference agreement provides total new budget authority for the new Department of \$34.9 billion, including \$4.7 billion in advance appropriations for future fiscal years. Of the amount provided for fiscal year 2004, \$29.4 billion is for discretionary programs. This is approximately \$1 billion more than the level requested by the President. It is also \$890 million more than the Senate-passed bill level, due to inclusion in the conference report of \$890 million in fiscal year 2004 funding for bio-defense countermeasures, so-called BioShield, as recommended in the House bill and the President's recently submitted revised budget request.

To further strengthen the capacity of the Nation's first responders to prepare for and respond to possible terrorist

threats and other emergencies, this conference report provides a total of \$4.037 billion for the Office of Domestic Preparedness. This includes \$1.7 billion for the State and local formula-based grant programs; \$500 million for law enforcement terrorism prevention grants; \$725 million for high-threat, high-density urban area grants; and \$750 million for the firefighter assistance grant program which will remain a stand-alone program.

The conference report also includes \$180 million for emergency management performance grants which will be managed by the Emergency Preparedness and Response Directorate.

The conference report includes a total of \$4.5 billion for the Transportation Security Administration. Air cargo security was a priority of the conference committee, as evidenced by the fact that the conference report provides \$85 million for air cargo security, which is \$55 million higher than the President's request. This funding will allow the Department to enhance its efforts to identify and prohibit the transportation of high-risk cargo on passenger aircraft as well as to advance efforts to research, develop, and procure the most effective and efficient air cargo inspection and screening systems.

Additionally, \$8.6 billion is provided for the defense of our borders; \$9.1 billion for emergency preparedness and response; \$6.8 billion for the Coast Guard; and \$1.5 billion for research, analysis, and infrastructure protection.

The conference committee met and completed action on Wednesday of last week, and the conference report was filed yesterday, September 23. It was adopted by the House of Representatives earlier this afternoon by a vote of 417 yeas to 8 nays. Senate passage of this conference report today is the final step necessary to send this fiscal year 2004 appropriations bill to the President for his signature into law before October 1, the beginning of the new fiscal year.

I must acknowledge the assistance and important work by the ranking member of the subcommittee, the distinguished Senator from West Virginia, Mr. BYRD; also the chairman of the House committee, Mr. ROGERS, and the ranking member of the House subcommittee, Mr. SABO, for their substantial contributions to the development and writing of this bill throughout the year.

We began the year with extensive hearings, reviewing the proposals for the budget of all of the directorates and the individual agencies that are funded in this bill, which includes the Secret Service, the Coast Guard and others. A lot of time has been devoted to understanding the missions and responsibilities of the 22 Federal agencies that were brought under the jurisdiction of the new Department of Homeland Security.

We have also worked closely and consulted with the distinguished Secretary

of the Department, Tom Ridge. In my judgment, Secretary Ridge is doing an excellent job of starting up this new Department, understanding the importance of the mission, and helping our country prepare for and prevent terrorist attacks, and prepare for and respond to natural disasters.

The chairmen and ranking members of the full committees have also been very helpful in the development of this legislation. We want to express our appreciation for their good work and their important assistance.

It is with pleasure and honor that I recommend to the Senate the adoption of this conference report.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Madam President, I understand other Senators, including Senator BYRD, may be speaking on this and will be here in a few minutes. I thought I would take the opportunity to make some comments on a specific provision in this conference report.

First, I am pleased that the Senate is considering this very important appropriations conference report for the new Department of Homeland Security, and I am pleased that the chairman of this subcommittee is my colleague from Mississippi. He has shown real leadership and stamina in getting this done, bringing it to the floor of the Senate, and holding the line on making sure that what we spend is what we need, a reasonable amount, and not allowing it to spiral out of control, which it could have very easily.

He deserves a lot of credit. It went right into conference and secured an agreement. This is going to be one of the appropriations bills that gets to the President for his signature early. That is the way this process should be done, because it is going to be finished before the beginning of the next fiscal year. There are not many appropriations bills that are going to do that this year or in most years.

I do have a concern and am disappointed with a particular provision in this conference report that affects the FAA reauthorization conference report. As chairman of the Aviation Subcommittee, we had extensive hearings, as I know this appropriations subcommittee did as well, in developing the legislation that led to the FAA reauthorization bill. It became very clear early on that one of the major issues that we had to confront was how to pay for security capital costs at airports. We have additional needs. There are additional costs. Many of the airports' lobbies are crowded because they have the new equipment that has been installed there to scan our luggage. A lot of additional costs have been heaped on the airports, local authorities, and, as a matter of fact, the TSA, the Transportation Security Administration.

The majority of the costs they are dealing with in the airports themselves are associated with modifying the airports to install explosive detection systems so that the baggage can be fully

screened. Eventually, we will have to move them out of the lobbies because we have lines in airports now outside the buildings. That equipment is going to have to be moved.

The estimated cost associated with these modifications ran up to as much as \$5 billion. I must say I gulped when I heard that. I have asked a lot of questions about just how much is needed and how are we going to fund it. That was the natural question to come up.

In the immediate aftermath of 9/11, as we worked aggressively to deal with tighter security at airports, the TSA was allowed to take \$500 million out of the Airport Improvement Program. Those funds are supposed to go for improving the airports, for aprons, runways, security fences. But that money was diverted, \$500 million of it, out of the normal AIP program into the security area.

The Transportation Security Administration came before the committee and said: We are going to need another \$500 million, and we are going to need more and more and more. We made it clear that they could not take another \$500 million bite out of the airport improvement program, which is what they intend to do. But we do see that we need probably at least \$250 million a year to help airports fund these important security projects. So we had to also come up with a way to provide that money.

The way that has been done is a \$2.50 security fee that has been assessed on all airline passengers. The airlines will tell you that the passengers are not paying that fee. They are just having to absorb it. Because if they raised ticket prices even a little bit, that would affect decisions that passengers make to go a different way or go on some other airline. So they maintain they are having to eat that fee. Regardless, the actual fee is supposed to be on the passengers.

I have some problems with that, particularly when you look at how that money is really being paid. It is a tremendous cost that is one of the issues affecting our airline industry and the ability of airlines to make a profit and to stay in business.

So I actually considered the idea of eliminating this fee. The other side of the coin is that we have to come up with some way, if we are going to provide for these security changes, to pay for them. While I think everybody has a responsibility to assume some of the cost—the Federal Government and local governments, perhaps, and airport authorities—the people themselves are getting additional security. So we decided to leave the fee in place.

Now, in my view, that is kind of like the highway trust fund. It is a fee charged for a specific purpose: aviation security. It should be used for that purpose, and that purpose should include airport security. For years, the highway trust fund money was held in the trust to make the deficit look lower than it really was. It was also quite

often used in ways other than highways and bridges, and it has continued to change. On the last highway bill, we had a big discussion about that. The budget people wanted to keep some of that money in the trust fund to help with the budget numbers; the appropriators didn't want to mandate that that money be spent, even though we needed highways and bridges. We came up with a compromise that the Budget Committee and appropriators could live with, and we spent more money and built more roads and bridges.

This is how I view a fee being paid for security at the airports. We said it would go into a fund where it would be earmarked for that purpose. The Appropriations Committee indicated that that was a problem for them because they don't like, understandably, that this money is earmarked in a particular area. They say the Appropriations Committee will look at that and make those decisions. Therefore, in the Homeland Security conference report, even though I thought we had worked our disagreement out, we originally had a fund of \$500 million and we went to \$250 million, leaving money that could be used for discretionary purposes, the appropriators chose to override the authorizing committee. That is the way it went through the Senate, with Senator COCHRAN raising concerns at the time the FAA Reauthorization was on the floor, but I thought it was with an understanding to allow the process to move forward.

Now the conference report knocks that provision out—it is kind of novel because the appropriations conference report knocks out a section in a bill that has not yet been passed. That was a little unusual, I thought. But I do think money that is paid by the passengers as a security fee for purposes such as airport security should be spent for that purpose, at a level designated by the authorizing committee. It should not be left to the discretion of the appropriators or anybody else to spend it at a level they see fit, although they may be spending the money on justified programs in other aviation areas of the Transportation Security Administration.

So I am concerned about this. This bill is too important for our country, it affects too many people, and there are too many things to be delayed. I would not do that. I wanted to go on record expressing my disappointment particularly in this section—how it was done—and say that if we are not going to mandate spending this money for airport security, it would be my desire to eliminate the fees. That may be where we will have to go next year. For now, this is a small part of a very large bill, although I think it is an important one. I had to raise my concerns and my objections, while not being prepared, of course, to delay this important legislation.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi, Mr. COCHRAN, is recognized.

Mr. COCHRAN. Madam President, I appreciate the comments made by my good friend and State colleague, who is chairman of the Aviation Subcommittee.

When the FAA bill was on the floor, I offered an amendment to strike that language, which would have reduced resources available to meet the Department of Homeland Security requirements for aviation security. That amendment was adopted without an objection.

Madam President, I would like to briefly explain the order in which these events occurred and the reason for providing the funding prohibition that was included in this conference report.

On June 12 the Senate considered H.R. 2115, the Vision 100-Century of Aviation Reauthorization Act reauthorizing Federal Aviation Administration (FAA) activities. The FAA reauthorization bill contained language that established a new entitlement for the Transportation Security Administration, an Aviation Security Capital Fund, by earmarking the first \$500 million derived from the aviation security service fees which are currently available and relied on as an offset to funding appropriated by Congress for aviation security.

This provision would have directed \$500 million used by the Transportation Security Administration to offset the funds appropriated by Congress for aviation security. During consideration of the bill, I offered an amendment with Senator BYRD that would instead "authorize to be appropriated to the Fund up to \$500 million for each of the fiscal years 2004 through 2007" for security improvements at our Nation's airports.

This amendment was adopted by the Senate without objection. However, when the FAA reauthorization bill was reported from conference, the language of that amendment was reversed. The conference agreement included \$250 million in direct spending, not subject to appropriation, to be taken from the offsetting fee collections. The concerns raised that the Department of Homeland Security would have to take a cut in its budget for aviation security to offset this new entitlement were not taken into consideration.

There is no argument that our nation's airports need the resources to make structural changes for the safety and security of the traveling public. We have provided funding to address these needs in this conference report. We would not have been able to do this without the inclusion of the provision prohibiting the reduction of offsetting collections.

I ask unanimous consent at this point that a letter to me from the Secretary of the Department of Homeland Security on this subject, dated June 11, be printed in the RECORD.

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

U.S. DEPARTMENT OF HOMELAND SECURITY, OFFICE OF THE SECRETARY,

Washington, DC, June 11, 2003.

Hon. THAD COCHRAN,
Chairman, Subcommittee on Homeland Security,
Committee on Appropriations, U.S. Senate,
Washington, DC.

DEAR MR. CHAIRMAN: The Administration appreciates the continued support of Congress for improvements in the security of the Nation's civil aviation system and supports Senate passage of S. 824, the Aviation Investment and Revitalization Vision Act (Air-V). However, the Administration opposes a provision in S. 824 that would divert fees collected for security activities for purposes other than the provision of direct security services.

With the Homeland Security Act of 2002, Congress identified the Department of Homeland Security (DHS) as the focal point of the federal government's homeland security efforts, with the mission of preventing terrorist attacks and reducing the nation's vulnerability to terrorism. While the Department welcomes and appreciates the assistance of other agencies in improving security, any diversion of security fees, such as that proposed in S. 824, would directly undermine the Department's ability to fulfill its mission. Air-V would establish an Aviation Security Capital Fund that is both outside the control of the Department and funded by diverting \$500 million per year of passenger and air carrier security fees collected by the Transportation Security Administration (TSA). This would diminish the Department's funding capacity. As you know, the direct annual costs of operating the aviation security system are not fully offset by these fees, and diverting fee revenue for other purposes clearly weakens the intended financing structure of TSA set forth in the Aviation and Transportation Security Act. Diversion of the fees into a fund outside of DHS undermines the ability of the Administration to apply these resources to the most pressing security needs.

The Administration looks forward to working with Congress to ensure that the version of the bill presented to the President eliminates this objectionable provision.

The Office of Management and Budget has advised that there is no objection, from the standpoint of the Administration's program, to the submission of these views for the consideration of the Congress.

Sincerely,

TOM RIDGE.

Mr. COCHRAN. I think it is important for us to continue to discuss and consider the appropriate way to deal with these fees and funds that are used for airport security. I assure my friend from Mississippi that I want to consider his suggestions and thoughts, and those of his committee, as we proceed in the administration of these programs. I want to see that the fees are fair for the airlines, fair for passengers, that they achieve the results we all want, which are improved airport security and the security and safety of the traveling public. I hope we can do that and work out an appropriate way of handling this issue in the future.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CORNYN). Without objection, it is so ordered.

Mr. BYRD. Mr. President, it seems to be the ill fortune—the ill fortune—of the present occupant of the chair to have to find himself in the chair when I make speeches. It seems that every time I make a speech, the Senator from Texas is in the chair.

Well, I am glad to see him there. He is a good Presiding Officer. He is alert to what is going on on the floor. He listens, and he is always very pleasant, congenial, and I congratulate him, because sitting in the chair while I speak makes it very difficult for any Senator to carry on his other necessary activities—the work in his office and meeting with constituents and so on. So I not only congratulate him, I also thank him.

Mr. President, this afternoon, the Senate finds itself with the first Homeland Security appropriations conference report before it. I thank Senate Chairman THAD COCHRAN, House Chairman HAROLD ROGERS, and the ranking member on the House Homeland Security Subcommittee, Representative MARTIN SABO, and all of the House and Senate conferees for their hard work on this important legislation. We all share the goal of ensuring that the new Homeland Security Department has the resources it needs to secure the homeland.

The conference report that is before the Senate provides \$29.4 billion for discretionary programs for fiscal year 2004 for the new Department. With the limited resources that were made available under the budget resolution, the conference agreement is fair and balanced. And so much of that is due to the fair and balanced approach that the distinguished chairman here, Senator THAD COCHRAN, always displays. It comes as a habit to him. It is just second nature.

This bill provides a \$1 billion increase over the President's request, and it makes a number of significant improvements in the organization of the Department.

In particular, I am pleased that the conference agreement includes language that will ensure that the new airline passenger screening system, known as CAPS II, will not be deployed before February 15, 2004, until the General Accounting Office has had the ability to review and report on the personal privacy protections, including an appeal process for individuals who are prevented from flying because the system has identified them as a security risk.

Funds are included, consistent with the Senate bill, to enhance border security—none of which were requested by the President—including funds for an additional 570 Border Patrol agents and funds to establish a northern border air wing.

Mr. President, \$60 million is included to begin the development of an anti-missile device for commercial aircraft.

The conference agreement restates both House and Senate language regarding full funding of antidumping enforcement provisions as well as calling on the Bureau of Customs and Border Protection to rigorously enforce trade laws pertaining to steel imports.

The conference agreement is good for disaster-prone States. The bill contains \$200 million for flood map modernization, which is the largest amount ever appropriated for this account. Further, the bill strikes a balance between premitigation and postmitigation grants. The bill contains \$150 million for predisaster mitigation grants, so that States have access to funds that help them to plan for and prevent damage from disasters.

The bill also continues to fund postdisaster mitigation, which is made available to States as a percentage of disaster relief money received from FEMA. The President had proposed to eliminate funding for postdisaster mitigation.

The conference agreement provides \$180 million for emergency management performance grants. These grants allow States and localities to develop basic emergency preparedness and response capabilities. This program is the only Department of Homeland Security grant program that is focused on all hazards, such as terrorist attacks, floods, and building collapses. The administration had recommended rolling this program into the ODP State grants program.

As Hurricane Isabel confirmed, we must make sure that this new Department of Homeland Security maintains its ability to respond to natural disasters, while preventing and responding to terrorist attacks. These are all significant improvements over the program proposed by the President.

Regrettably, even with these improvements, the conference agreement leaves significant gaps in the security of our homeland. After 9/11, Congress passed the PATRIOT Act, the Maritime Transportation Security Act, the Aviation and Transportation Security Act, and the Enhanced Border Security Act. The President signed these measures with great fanfare, but the President has done little to fulfill the promise of those laws.

The inadequate allocation given to the subcommittee has forced the conferees to underfund a number of these critical new authorities.

Last Wednesday, I offered an amendment in conference to add \$1.25 billion of emergency funding to the bill to secure the homeland by funding some of the authorities that the President had signed into law after 9/11 but failed to fund. The amendment included funding for port security, aviation security, chemical security, first responder grants, and for the Coast Guard Deep-water Program. The White House opposed and the Republicans rejected the amendment.

On the same day, last Wednesday, the President sent to Congress a supple-

mental request for his war in Iraq that totals \$87 billion. No funding was requested to help secure our homeland. Yet included in his request was \$20.3 billion for the reconstruction of Iraq, of which \$5.1 billion is for homeland security in Iraq.

If my amendment had been approved, the conference report that is before the Senate would have included \$125 million more to hire 1,300 more Customs inspectors on our U.S. borders, \$200 million more for first responder grants to equip and train police and firefighters here at home, and \$100 million for the U.S. Coast Guard to secure our ports.

Instead, next week, the Senate will be considering the President's request for reconstructing Iraq, including \$290 million for Iraqi fire departments; \$150 million for Iraqi border enforcement, including 2,500 customs inspectors; \$150 million for an Iraqi "911" emergency system; \$499 million for Iraqi prisons; and \$82 million for an Iraqi coast guard.

I continue to maintain that the Senate should take some time to review the President's supplemental request for the cost of the war in Iraq. We should hold further hearings in the Senate Appropriations Committee. We should hear from outside witnesses, not just administration witnesses. The Senate should not act as a rubberstamp for any President. I find it more than ironic that the Bush administration would oppose homeland security protections for American citizens but ask Congress to express dollars to Iraq for security efforts there.

With regard to the Homeland Security conference report that is before us, I again thank Chairman COCHRAN and his staff for their hard work in producing the first Homeland Security appropriations conference report. I also thank my own staff in this regard, and I thank all of the subcommittee members on both sides of the aisle and their staffs as well. While this conference report does not include sufficient resources to fund many of the new homeland security programs that this Congress authorized in response to the attacks of 9/11, it is a significant improvement over the President's request. I support its adoption.

The chairman would have done more if he had had more funds with which to do it. I again thank him for his many courtesies. I thank the floor staff and the Chair.

I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, I thank the distinguished Senator from West Virginia for his kind words, his compliments to me and the members of our staff. He also devoted a great deal of personal attention and effort to the development of this legislation, and his experience and good judgment have been invaluable in the presentation of this conference report to the Senate today.

I know of no other Senators who are seeking to speak on the conference report at this time. Not wanting to leave anyone out of the debate who wants to join in, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. COCHRAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. LEVIN. Mr. President, I will support the Homeland Security appropriations conference report today because this funding is vital to our first responders and all of those responsible for protecting us. I am disappointed that the conference committee rejected additional funding for first responders, port security grants, aviation security, additional Customs inspectors at our borders and other protective measures. At a time when homeland security should be a top priority, we should not be underfunding these programs.

In addition to inadequate funding, the grant formula that is used to distribute funding under the Office of Domestic Preparedness State Homeland Security Grant Program is inequitable and needs to be changed. This program distributes funds using a minimum State funding formula that arbitrarily sets aside a large portion of the funds to be divided equally among the States, regardless of need. Many Federal grant programs provide a minimum State funding level to ensure funds reach all areas of the country. But the State minimum formula in this Department of Homeland Security appropriations bill, which is taken from the USA Patriot Act and sets aside 0.75 percent of the total funds as a base for each State, is unusually high and therefore inequitable. I will continue to work to change this formula so that funding is allocated in an equitable and reasonable manner.

I am also disappointed that this bill does not sufficiently address a problem known as "corporate inversions." As young men and women are putting their lives on the line for us and our country, some corporations have put profits before patriotism by pretending to reincorporate in Bermuda or some other offshore tax haven to avoid paying their fair share of U.S. taxes. This process is called corporate inversion. It is unfair, it is founded on a deception, it mistreats the average American taxpayer, and it undercuts U.S. corporations that do pay their taxes. A company simply set up a shell headquarters in a tax haven, while all the benefits of living in America remain, all the benefits we would hope to provide in this bill—for instance, protection, homeland security, police, fire, port security. They take advantage of all the other services which are provided to these particular corporations. But because a shell headquarters has

been opened up for a few of these corporations in Bermuda, they have avoided paying taxes.

I am disappointed that the conferees chose to allow a special benefit to these unpatriotic companies to continue to exist. Back in July, when this body debated the bill before us, the Senate adopted the amendment I offered with Senator REID that disqualified these unpatriotic companies from competing for homeland security contracts. Unfortunately, the conference committee dropped this amendment from the bill, so those who have engaged in these so-called inversion transactions in past years can still enter into homeland security contracts.

They continue to use our roads and our law enforcement, our education system. They use our free-trade laws. But then they avoid paying taxes by opening up a post office box and a computer in a tax haven.

Inversions are unfair to the taxpayers who are left holding the bag and unfair to the U.S. companies that are doing the right thing by not inverting but who nevertheless are at a competitive disadvantage because of these sham moves. Those that engaged in these specious inversion transaction in past years can still enter into homeland security contracts—the current prohibition in the law only applies to future inverters, not those that did so previously. The competitive advantage these inverters enjoy vis-a-vis every other U.S. company, therefore remains undisturbed.

Senator REID and I, along with other of our colleagues, have introduced a bill that would deny tax benefits to U.S. companies that invert by continuing to treat them as U.S. companies for tax purposes. This bill would not only level the playing field between these companies and their U.S. competitors, it would also save other U.S. taxpayers from having to make up an estimated \$4.9 billion in lost tax revenues over the next 10 years.

I hope that we will soon have an opportunity to act on this legislation in order to address this problem.

Mr. NICKLES. Mr. President, today we are considering the conference report to accompany H.R. 2555, the Homeland Security appropriations bill for fiscal year 2004.

I commend the distinguished chairman and ranking member. They and their staffs need to be congratulated on successfully reporting and conferring the very first Homeland Security appropriations bill.

The pending bill provides \$30.2 billion in total budget authority and \$31.0 billion in total outlays for fiscal year 2004. The Senate bill is \$1.4 billion in BA and outlays above the President's budget request.

The pending bill funds the program of the Department of Homeland Security, including the Bureau of Customs and Border Protection, the Bureau of Immigration and Customs Enforcement,

the U.S. Coast Guard, the Transportation Security Administration, the U.S. Secret Service, the Office for Domestic Preparedness, and several other offices and activities.

Mr. President, I ask unanimous consent that a table displaying the Budget Committee scoring of the bill be printed in the RECORD.

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

H.R. 2555, DEPT. OF HOMELAND SECURITY APPROPRIATIONS, 2004: SPENDING COMPARISONS: CONFERENCE REPORT

(Fiscal year 2004, in millions of dollars)

	General purpose	Mandatory	Total
Conference Report:			
Budget authority	29,411	831	30,242
Outlays	30,110	847	30,957
Senate 302(b) allocation:			
Budget authority	28,521	831	29,352
Outlays	29,737	847	30,584
2003 level:			
Budget authority	28,269	889	29,158
Outlays	27,558	818	28,376
President's request:			
Budget authority	28,004	831	28,835
Outlays	28,581	847	29,428
House-passed bill:			
Budget authority	29,411	831	30,242
Outlays	30,500	847	31,347
Senate-passed bill:			
Budget authority	28,521	831	29,352
Outlays	29,737	847	30,584
CONFERENCE REPORT COMPARED TO—			
Senate 302(b) allocation:			
Budget authority	890	.....	890
Outlays	373	.....	373
2003 level:			
Budget authority	1,142	(58)	1,084
Outlays	2,552	29	2,581
President's request:			
Budget authority	1,407	.....	1,407
Outlays	1,529	.....	1,529
House-passed bill:			
Budget authority .....	.....	.....	.....
Outlays	(390)	.....	(390)
Senate-passed bill:			
Budget authority	890	.....	890
Outlays	373	.....	373

Note: Details may not add to totals due to rounding. Totals adjusted for consistency with scorekeeping conventions. Prepared by SBC Majority Staff, 9/24/2003.

Mr. NICKLES. Mr. President, the conference agreement on the fiscal year 2004 appropriations bill for the Department of Homeland Security includes funding for the Project Bio-shield proposal, a \$5.6-billion initiative proposed in the President's 2004 budget to develop and purchase countermeasures to combat public health threats.

The appropriation itself is very unusual, providing 10 years' worth of discretionary program funding all at once, with \$890 million for 2004 and essentially a gigantic \$4.7 billion "advance" appropriation to cover the next 9 years. Further, this funding is being provided without authorization, since that bill, S. 15, has been blocked from consideration in the Senate by a small minority of Senators.

I am very concerned about appropriating this much money for any purpose without a proper authorization. I am equally concerned about protecting the integrity of the budget due to the proposal's unconventional use of advance appropriations authority. It is rare to provide 10 years' worth of appropriations to a program in one fell swoop, and it opens the door to future "piggy-banking" or redirection of those funds.

My colleagues may remember that Congress decided in the 2001 budget resolution to begin limiting the use of advance appropriations since they had become a way to avoid annual spending limits. The potential to abuse advance appropriations for scoring purposes was never more clearly illustrated than with the recent consideration of the Labor-HHS appropriations bill in the Senate, as amendment after amendment altered the timing of advance appropriations and claimed it as an "off-set."

Since the potential for redirecting, rescinding, delaying, or accelerating the \$4.7 billion Bioshield advance appropriation presents too great a temptation, the HELP Committee Chairman JUDD GREGG is working with me to prevent these abuses by creating a new scorekeeping rule to protect the unique purpose of this funding. The rule would ensure that any funding for Bioshield will be spent on that program, or not spent at all, by providing that any legislation changing the availability of the funds will not be scored for purposes of budget enforcement. However, until the authorization bill including our protections is enacted, the budget remains at risk.

Since the President originally requested that Bioshield be a mandatory spending program, the 2004 budget resolution did not provide for its consideration as a discretionary spending program. Thus, my colleagues should be aware that its inclusion in this bill subjects the entire bill to a 60-vote point of order.

I plan to take whatever steps are necessary this year, and in next year's budget resolution, to ensure that this program is properly authorized and that the integrity of the budget is protected. I look forward to working with our leader and my fellow committee chairmen in this regard.

Mr. MCCAIN. Mr. President, the primary purposes of the Department of Homeland Security, DHS, are to prevent terrorist attacks within the United States; to reduce America's vulnerability to terrorism; and, to minimize the damage and recover from attacks that may occur. The fledgling agency has begun to address many of the challenges presented it, including the monumental restructuring of 22 domestic Federal agencies. The Appropriation Committee's role is to provide the DHS the funds necessary to continue to carry out its important missions. I am pleased that, in this first homeland security appropriations bill, the agency's priorities were, for the most part, placed above the special interests'.

The conference report and the accompanying Statement of Managers is relatively free of objectionable provisions. There are, however, a couple of provisions that merit the attention of my colleagues.

One such provision would prohibit any funds from being used to implement section 44922(h) of title 49. Inter-

estingly, there is no such section under existing law.

So why have the appropriators taken action to prohibit the implementation of a provision of law that doesn't exist? Well, the FAA reauthorization conference report, which has yet to be voted on by the full Senate, includes such a section that we expect will become law as soon as we can take final action on the bill and send it to the President for his signature.

The FAA reauthorization conference report provision would provide \$250 million per year to airports for capital costs associated with security at our Nation's airports. We received testimony during our many oversight hearings on aviation security that such costs could total almost \$5 billion. Therefore, the FAA conference report appropriately provides funding for such costs.

Do the appropriators disagree that such funding is needed? Apparently not, since the DHS conference report actually contains an appropriation of \$250 million—exactly the same amount as the FAA bill—for such costs. So what is behind the appropriators' actions?

Given that the DHS conference report doesn't provide an explanation, one can only conclude they want to ensure complete and total control, as usual, even if it means taking action to nullify a provision not in their jurisdiction and that has not even been enacted.

The funding under the FAA conference report is taken from the revenue collected by the \$2.50 security fee imposed on all airline passengers. That fee was first established by legislation originating in the Commerce Committee after the September 11 attacks. The legislation also specified that the revenue could be used by the appropriators to help pay for the costs of aviation security.

The FAA conference report simply expands the uses of the fee revenue to include capital security costs at airports. The report also makes the money available directly to the Secretary of Homeland Security without further appropriation.

Our Nation's security, including the very important issue of aviation security, which the Congress has spent considerable time and attention addressing, should not be jeopardized due to needless jurisdictional fights. It is unfortunate that such a provision was included in such an important funding bill without any consultation with the authorizing committee of jurisdiction. I would hope we could do better for the sake of our Nation's security interests.

In addition, I am concerned about a provision in the conference report that would transfer funding for the Assistance to Firefighters Grant program from the Department of Homeland Security's Emergency Preparedness and Response Directorate to the Office for Domestic Preparedness.

The Assistance to Firefighters Grant program is a highly successful Federal

program created to meet the basic day-to-day needs of our Nation's firefighters. The program uses a competitive, merit-based review process to distribute funds directly to fire departments demonstrating the greatest need. Grants under this program are used for improving local response to "all-hazards," including wildfires, hazardous materials accidents, tornadoes, floods, and structural fires, and are not solely for antiterrorism efforts.

I am greatly concerned about the effects of this transfer on the program. ODP has little experience at running merit-based programs, such as the Assistance to Firefighters Grant program. ODP is focused on counterterrorism, and may not have the experience necessary to understand the basic requirements of today's firefighter to deal with non-terrorism related disasters.

I understand that the administration's fiscal year 2004 budget submission seeks to transfer this grant program to ODP. However, changes to the Assistance to Firefighters Grant program should be made after a thorough review and subsequent legislative changes by the appropriate authorizing committees, not as a provision in an appropriations bill.

Compared to other appropriations measures, the conference report and Statement of Managers contain fewer objectionable provisions and earmarks. I would hope future appropriations measures follow suit.

Mr. COCHRAN. Mr. President, we have no other Senators who wish to speak on the adoption of the conference report on the Homeland Security appropriations bill. We are prepared to proceed to a vote on the conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to. Mr. COCHRAN. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. DURBIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

Mr. COCHRAN. Mr. President, I am pleased that the Senate has acted favorably on this conference report. Before we leave the subject, I have to express my appreciation to the members of the staff of our subcommittee in the Senate on our side of the aisle who worked so hard to make this conference report a reality. This was breaking new ground; there is no precedent for this bill. This is a historic event and a lot of hard work went into writing the bill and guiding it to passage on the floor of the Senate and then working out our differences with the other body.

I am pleased that the Senate has unanimously adopted the conference report. I especially want to express my

appreciation to Rebecca Davies, chief clerk of the subcommittee, and to the other staff members who assisted her in the hard work that was done in furtherance of our efforts to get a bill, including Les Spivey, Rachelle Schroeder, Carol Cribbs, James Hayes, and Josh Manley. They all deserve our thanks and congratulations for a job well done.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. CAMPBELL. Madam President, speaking for the leader, as in executive session, I ask unanimous consent that at 5:30 p.m. today, the Senate proceed to executive session to consider the following nomination on today's Executive Calendar: Calendar No. 358, the nomination of Larry Burns to be a U.S. District Judge for the Southern District of California. I further ask unanimous consent that the Senate proceed to a vote on the confirmation of the nomination; that following the vote, the President be immediately notified of the Senate's action; and that the Senate then return to legislative session.

The PRESIDING OFFICER. Is there objection? The Democratic whip.

Mr. REID. Reserving the right to object, and I will not object, this is the 154th judge we have approved. As I recall, there are three we have not approved. It is 154 to 3. That is a pretty good record.

I also ask that the unanimous consent request be modified to allow Senator BOXER 2 minutes to speak prior to the vote on the nomination of Larry Burns.

The PRESIDING OFFICER. Does the Senator so modify his unanimous consent request?

Mr. CAMPBELL. I so modify the request.

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

Mr. CAMPBELL. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

UNANIMOUS CONSENT AGREEMENT—H.R. 2657

Mr. CAMPBELL. Madam President, I ask unanimous consent that when the Senate proceeds to the consideration of the conference report to accompany H.R. 2657, it be considered under the following time limitation: myself, 10 minutes, Senator DURBIN, 10 minutes, and Senator STEVENS, 10 minutes.

I further ask unanimous consent that following the use or yielding back of time, the conference report be agreed to and the motion to reconsider be laid on the table, with no intervening action or debate.

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

Mr. CAMPBELL. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mrs. BOXER. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

EXECUTIVE SESSION

NOMINATION OF LARRY ALAN BURNS, OF CALIFORNIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF CALIFORNIA

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of Executive Calendar No. 572, which the clerk will report.

The legislative clerk read the nomination of Larry Alan Burns, of California, to be United States District Judge for the Southern District of California.

Mrs. BOXER. Madam President, we are about to have a vote on a judge. I wanted to take this time, 2 minutes, to offer my support for this nominee. I want to say this particular nominee for the Southern District Court of California, Larry Burns, is very qualified for this position. He is a native Californian. He is a graduate of Point Loma College and the University of San Diego Law School.

I want to emphasize the wide support Judge Burns has from law enforcement and civil rights organizations. His firm commitment to the law was well regarded while he was both a Federal and a State prosecutor. He has developed an equally respected reputation as a judge, due to his character and his legal expertise.

So I believe the Southern District will benefit greatly from the exemplary services of Judge Burns. I fully support confirmation of this nominee.

At a time when we have a lot of partisan discord, I think it is important to know that in California, Senator FEINSTEIN and I, working with the administration, have a wonderful process in place by which the two Democrat Senators get three people on a committee to pass judgment on these nominees and the administration appoints three people. Each nominee for the district court goes through our process and they are then recommended to the President on a majority vote.

What has happened is we have taken the politics, truly, out of this judicial selection process. We have come up with mainstream candidates. That is very important because I believed the President when he came forward and said he was going to govern from the center. When he puts forward judicial nominees who are from the center, who are not radical, who are not far to the right, I am the first one to support them, and I have supported well over 90 percent of them.

When it comes to voting for nominees who are off the scales and not representative of the values of America, I am the first one to say it is not right. We have a process in place for the district courts that I only wish we had for the higher courts—the circuit courts—because it isn't working that well. But it is working very well in the district courts.

Again, I urge my colleagues to vote yes on Larry Burns's nomination, and I hope it will be a unanimous vote.

Mr. LEAHY. Madam President, I am pleased that we are now turning to the nomination of Magistrate Judge Larry Alan Burns for the Southern District of California. This well qualified nominee is the product of the exemplary bipartisan commission that Senators FEINSTEIN and BOXER have worked so hard to maintain. It is a testament to their diligence that we have such stellar nominees heading to California's federal courts.

Judge Burns has been a United States Magistrate for the past six years in San Diego. Prior to becoming a Magistrate, Mr. Burns gained significant trial experience as a State and federal criminal prosecutor. Judge Burns has also served as a mentor to disadvantaged students, assisting them in achieving their educational and career goals. He was honored for his work in this area with a Faculty Mentoring Award from San Diego State University in 1996. In addition, he has taught legal courses at both the undergraduate and graduate school levels at several San Diego universities. In light of his remarkable record of public service and trial experience, it is not surprising that the American Bar Association was unanimous in its determination that Judge Burns is "Well-Qualified" to be a federal district court judge.

The Southern District of California the busiest federal district in the nation. Last Congress, in enacting the DOJ Reauthorization legislation, we created the seat that Judge Burns is nominated to in an effort to alleviate their staffing shortage. In light of their demanding caseload and corresponding staffing needs, the Judiciary Committee expedited nominations to the Southern District. Judge Burns was nominated on May 1, 2003 and was voted out of committee on September 4, 2003. It is unfortunate that Judge Burns and another nominee for this court have been pending on the floor all month but I am pleased that we are voting on Judge Burns today. The path of his nomination demonstrates that the fact that the Senate can act expeditiously when we receive well-qualified, consensus nominations on courts that need additional judges.

Another consensus nominee for another vacancy in that district remains on the Senate executive calendar awaiting action. I implore the Senate Republican leadership to allow a prompt vote on the nomination of Dana Makoto Sabraw. I expect that