There is one issue, however, that still gives me great concern; that is, the funding in this bill for the proposed National Bio and Agro-Defense Facility. The final conference report includes my amendment requiring DHS to conduct a security and risk mitigation study before getting any money for construction of the bio facility. It also includes an additional requirement that the National Academy of Sciences puts its independent eyes on the Department's study before funds go out the door.

This is a good start, but it is not enough. I do not understand why we are going to appropriate $30 million for a project we need not one but two studies about whether this project can move forward safely.

Independent experts have real concerns about building the NBAF in the heart of the beef belt where an accidental or intentional release of foot-and-mouth disease could have disastrous consequences for America's livestock industry, and that industry includes Montana where the livestock industry is a $1.5 billion industry.

This facility will house some of the most dangerous agricultural diseases around the world. We should not start doing this research on the U.S. mainland and in the middle of tornado alley without taking every possible precaution.

On a matter this serious, we ought to measure twice and cut once. Regrettably, by giving the Department $30 million this year, we are not heeding that old saying.

The GAO, the subcommittee, and independent experts acknowledge that we do not know if this research can be done safely on the U.S. mainland. We all agree that an accidental release of foot-and-mouth disease or another dangerous disease from this facility would devastate America's livestock industry. Yet we are providing the money to go ahead with it anyway.

Why not just wait and do the studies this year and then the Department can come back to us with their revised funding request next year?

I understand this has to do with getting Kansas to sign a cost-sharing agreement. But are we convinced Kansas will not put forward the money next year if this facility is to be built there?

If this facility is built in Kansas, the United States will become the only country, other than England and Canada, to do FMD research on a mainland. Everyone else does it on an island.

England had an accidental release in 2007 which led to eight separate outbreaks of FMD on farms surrounding their facility. Canada at least does it in an urban area far from livestock production areas.

Congress's nonpartisan, independent auditor, the Government Accountability Office, has sounded the alarm on this issue. They are telling us that Homeland Security has not conducted or commissioned any study to determine whether foot-and-mouth disease work can be done safely on the mainland.

Proponents of this facility have said it is OK to do this research because the new Kansas facility will have the most modern technology and all the safety bells and whistles that Plum Island lacks. But the GAO rightfully argues this view only encourages a false sense of security.

The GAO says:

> Even with a proper biosafety program, human error can never be completely eliminated. Many experts told us that the human component accounts for the majority of accidents in high-contaminant laboratories. This risk persists, even in the most modern facilities and with the latest technology.

I know I am not the only Senator who shares the GAO's concern. So I look forward to working with many of my colleagues on this issue again next year. We do need to pay attention to what these studies say, and as a member of this subcommittee, I will be watching it very closely.

The Department is going to come here next spring with a $500 million request for funding for this project. That is a lot of money. But the true cost of doing this research in the middle of tornado alley could be much higher. The cost of cleaning up after an FMD release—the culling of entire herds of livestock, the loss of foreign agricultural sales that will endure for years after a release, and the loss of America's food security—will be measured in the tens of billions of dollars. That is something America cannot afford, and we must not let it happen.

Madam President, I yield the floor and suggest the absence of a quorum. I ask that the time be equally divided between both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

RECESS

Mr. BYRD. Madam President, I ask unanimous consent that the Senate stand in recess until the hour of 2:15 p.m. today.

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

Thereupon the Senate, at 12:26 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. CARPER).

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2010—CONFERENCE REPORT—Continued

The PRESIDING OFFICER. Who seeks recognition?

The Senator from Oklahoma is recognized.

Mr. COBURN. Mr. President, I believe we are going to be considering the Homeland Security conference report. I want to spend a few minutes talking about that so that the American public might realize what we are doing. This year's spending totals have averaged, on individual appropriations bills, anywhere from a high of 24 percent to a low of about .6 percent, on one bill that had received twice its annual appropriation in the stimulus. We have of course a conference report that is $42.7 billion. That is a 6.5, almost 7-percent increase over last year, the same the year before, and a 23-percent increase the year before that. There is no question, homeland security is an important part.

The issue I want to raise with my colleagues and the American people is, we had inflation of 1.5 percent last year. We do have one bill, one bill that has come in at inflation or less. All the rest are averaging around 10, 11, 12 percent increases. We ought to be concerned about what the Congress is doing in terms of increasing the spending in light of the fact that we have just finished a year in which we had a published $1.4 trillion deficit. But those are Enron numbers. That is Enron accounting because we didn't recognize all the money we borrowed from trust funds that don't go to the public debt, that are internal IOUs that our children nevertheless will still have to pay back.

The real reason I want to talk about this bill is because it purports to have an amendment on competitive bidding. I will grant that the amendment is better than no amendment, but the American people should be outraged at what we have done on competitive bidding in this bill. What we have said is we want competitive bidding—except for our friends. If you are connected to a Senator through an earmark or if you are connected through a grant process, what we have done is taken a large number of grants and directed them specifically without competitive bidding. What does that mean to the process? What does that do to the integrity of the process? It says if you are well heeled and well connected, then in fact you can have what you want on a noncompetitive basis, because that is what the amendment in the bill says. But if in fact you are not, then you will have to compete on the basis of merit and price like everybody else in the country.

Once again we have earned our lack of endorsement by the American public because of what we have said: ''Unless otherwise authorized by statute without regard to the reference statute.'' Those are fancy words for saying we want competitive bidding on everything except earmarks and the congressional directive we have in this bill.

That means if you have a business and you have an earmark, you didn't have to be the best business to get

that, to supply the Federal Government whatever it is. If you are a grant recipient and got earmarked, you didn't have to be the one with the greatest need, No. 1, or the most efficient way to generate the dollars through that grant. What it does is it puts on its ear any semblance of fair play, No. 1; and, No. 2, it takes away the initiative for everybody else who now is going to get a competitive bid. What it is going to do is drive a greater demand for earmarks in the future.

We ought to ask ourselves the following question: If this is taxpayer money and our grandchildren's money—because 43 percent of this bill is going to be borrowed—is it morally correct, is it intellectually honest that we would say: If you are connected, if you have an ''in,'' you don't have to meet the same level of responsibility and accountability as those who are well connected? I think that is a great question for us to debate.

Unfortunately, a real competitive bidding amendment was not agreed to in this bill that would put all of it at competitive bidding. Senators have the right to say we ought to do something. But they don't necessarily have the right to say we ought to do something and this person ought to benefit from it. It is not ours to give away. When we do things as we have done in this bill to protect those most well heeled, those most well connected to the Congress, by saying everybody else is going to play under one set of rules but if, in fact, you have a friend or a connection or an earmark or a directed grant, you don't have to play by those rules, not only is it unfair to everybody else who does not have to play by those rules, it actually undermines the value of what we do.

On the basis of that and the spending levels, I plan on opposing the Homeland Security conference report. My hope is that we will get better, that in fact we will not play games with the American public, that we will not say our friends get to get treated differently than anybody else in this country and that every dollar we spend we can assure to the American taxpayer is going to go to the best firm to do that based on a competitive bid so we actually get the best value for the hard-earned dollars that are being spent.

I yield the floor.

Mr. LIEBERMAN. Mr. President, I rise to urge my colleagues to vote for passage of the fiscal year 2010 appropriations bill for the Department of Homeland Security.

First, I want to thank my colleagues on the Appropriations Subcommittee on Homeland Security, Chairman Byrd and Ranking Member Voinovich, as well as full Committee Chairman and Ranking Member Inouye and Cochran for all the hard work and consideration they brought to this bill.

The overall bill, which provides $42.776 billion in discretionary funding for DHS in fiscal year 2010, is $151 million less than the total provided in the Senate bill, but $159 million higher than the House funding total, and seems to me to be a fair compromise.

The resources provided in the bill are sufficient to carry out the Department's core missions of protecting the homeland against the threat of terrorism, securing our borders, enforcing our immigration laws, and preparing for and responding to terrorist attacks and natural disasters.

While there are many programs and activities at DHS deserving of funding above the level provided in this bill, we are in a time of serious economic challenge, and obviously tough choices had to be—and were—made in putting this legislation together.

This bill reflects the priorities of a department that has made great strides in the last 6 years but still faces many hurdles in fulfilling the mission Congress laid out for it in 2002. Senator COLLINS and I have worked together since DHS was created—alternating as chairman and ranking member of the primary authorizing committee for the Department—to strengthen the Department's ability to carry out its many national security assignments, to strengthen its management, facilitate its integration, and to hold its leadership accountable to an American public that has a right to be safe and secure within the borders of our own Nation.

In May, I wrote to Chairman Byrd and Ranking Member Voinovich setting forth what I believed to be the most significant appropriations priorities for the Department, and I am grateful that a number of my recommendations have been incorporated into this bill. Let me briefly discuss a few sections of this bill that I believe are particularly important to our homeland security.

First, I am pleased the Appropriations Committee recognized that the Department's management and operations accounts need adequate funding if DHS is to succeed as it must. Secretary Napolitano has emphasized the need to create ''One DHS'' where the Department's many components are working closely together. To accomplish this, the offices for policy, human capital, acquisition, and information technology need additional resources, and all received significant increases in their budgets. The additional investment in acquisition oversight is particularly gratifying, as it will improve the Department's ability to oversee the $12 billion it spends each year on contracts with the private sector to better ensure our tax dollars are not wasted on bloated or ineffective programs.

Second, this bill, together with the funding provided in the fiscal year 2009 supplemental, significantly increases resources for combating violence on our southern border and includes the bulk of the $500 million increase in border security funding Senator COLLINS and I successfully added to the Senate budget resolution in March.

The FBI has said that the Mexican drug cartels are the number one organized crime threat in America today, replacing the Mafia. The kind of targeted and grisly violence we are seeing in Mexico is unprecedented. Thanks to this funding, DHS will be able to send almost 300 additional law enforcement officers to our ports of entry in order to conduct southbound inspections and interdict the illegal flow of cash and guns into Mexico that is fueling the cartels' ruthless attacks against the Mexican Government.

The funding will also add hundreds of ICE investigators to work on drug, currency, and firearms cases in the border region, and will expand the Border Enforcement Security Task Force fusion centers that ICE has established along the southwest border. This funding was badly needed to help Federal, State, and local law enforcement agencies take down these sophisticated and dangerous drug and human smuggling networks. The Mexican drug cartels represent a clear and present threat to homeland security, and I remain fully committed to working with the administration to support our Federal law enforcement agencies in this crucial fight.

Third, this bill continues funding for the Homeland Security grant programs that our first responders need to prepare for acts of terrorism and natural disasters at the State, local, and tribal levels. Funding for the State Homeland Security Grant Program, which provides basic preparedness funds to all States and is the largest of DHS's grant programs, remains steady from last year at $950 million, including $60 million for grants focused on border security, essentially the full level authorized by Congress in the Implementing Recommendations of the 9/11 Commission Act of 2007. Funds for Urban Area Security Initiative, UASI, grants, which provide resources to the Nation's highest risk metropolitan areas, are increased by nearly $50 million over last year.

I am also pleased that funding for SAFER grants which assist local fire departments with the cost of hiring new firefighters was doubled to $420 million for fiscal year 2010. In this era of budget constraints, this funding will help ensure that communities are able to continue to staff their local firehouses.

The Appropriations Committee has also wisely restored a significant portion of the funding cut from the President's budget for assistance to firefighter grants. These grants fund essential equipment, vehicles and training for firefighters. However, the $390 million for these grants still represents a cut of nearly one-third below the fiscal year 2009 appropriation. I hope that next year the funding for this important program will be brought fully up to its previous level.

Fourth, this bill wisely supports the administration's request for a significant increase in funding for cybersecurity at DHS which has been identified

as one of our top national security priorities. The Department needs resources to protect Federal civilian networks from cyber-related threats and to work with the private sector to protect their networks and infrastructures. The Homeland Security and Governmental Affairs Committee is currently working to develop legislation that strengthens the government's authorities with respect to cybersecurity, so this funding decision is particularly important.

Fifth, this bill adds $25 million above last year's appropriation to support coordination, management and regulation of high-risk chemical facilities and brings DHS regulator staff to 246—an increase of 168 over the 2009 staffing level.

This bill makes other essential homeland security investments in port security, transit security, science and technology, and biosecurity, all of which are critical to the overall security of the Nation.

I believe that overall this is a strong and essential piece of legislation. I thank the leadership and the members of the Appropriations Committee for their work on this bill and strongly urge my colleagues to support its passage.

Mr. INOUYE. Mr. President, I submit pursuant to Senate rules a report, and I ask unanimous consent that it be printed in the RECORD.

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

DISCLOSURE OF CONGRESSIONALLY DIRECTED SPENDING ITEMS

I certify that the information required by rule XLIV of the Standing Rules of the Senate related to congressionally directed spending items has been identified in the conference report which accompanies H.R. 2892 and that the required information has been available on a publicly accessible congressional website at least 48 hours before a vote on the pending bill.

Mr. LEAHY. Mr. President, I am pleased that the Senate has passed the Department of Homeland Security appropriations conference report. This legislation contains important funding for the Department of Homeland Security to carry out its various responsibilities. I commend Chairman INOUYE and Subcommittee Chairman BYRD for their hard work on this legislation, and also for their support of a vibrant immigration program that fosters direct investment in U.S. job creation that is extended through this legislation.

The conference report we will pass today contains a 3-year extension for the EB–5 regional center program. This extension will bring badly needed stability to this program. Foreign investors who look to the regional center program must have the confidence that the Federal Government supports and believes in this program. Stakeholders that rely on financing through this program must have the predictability that this 3-year extension will help provide. As the U.S. Citizenship and Immigration Services expressed to the Senate Judiciary Committee during a recent hearing about this program, the biggest impediment to the EB–5 regional center program is its lack of permanence. I have long believed in the potential of this program as an economic engine for America's communities. Given the recent and rapid expansion in the number of approved regional centers around the country, it is clear that many Americans recognize this potential, as well.

In an effort to make this program an integral part of our immigration system, I offered an amendment to the Homeland Security appropriations bill on the Senate Floor to provide for its permanent authorization. That amendment was overwhelmingly adopted. Unfortunately, the conference committee did not retain that permanent authorization, and once again, irrational immigration politics got in the way of good policy. Instead of making permanent a program that has created thousands of American jobs and brought more than $1 billion of capital investment into our communities since 2006, the conference was compelled to sacrifice this opportunity for no legitimate reason. However, it is still heartening to know that over the next 3 years the citizens who are working to better their communities through the regional center program will be able to do so without the fear of constant interruption and uncertainty.

I want to take a moment to commend all of the resourceful business people who have turned to this program to finance key economic development projects in their communities. Despite the hurdles that have continually hampered the efforts I have led to renew the program, the stakeholder community has not only continued to work hard on improving local economies across the country, but has directly engaged Members of Congress to ensure that this program does not wither away. As a result of their efforts to retain a strong extension in the conference report, I am confident that many more Members of Congress have a better understanding of this program's potential and importance in their own communities.

These stakeholders all deserve thanks for the jobs and capital investment they are bringing to their communities. In Vermont, people like Bill Stenger at Jay Peak Resort and Win Smith at Sugarbush Resort have used the EB–5 program to keep Vermont's ski industry a vibrant and foundational part of the Vermont economy. As a direct result of the EB–5 regional center program and in a very difficult economic environment, dozens of subcontractors in Northeastern Vermont are hard at work on a project financed through the EB–5 Regional Center program. And in an effort to build on these successes, the State of Vermont is actively involved in working to expand the business sectors covered by Vermont's regional center so that technology firms and other diverse Vermont business enterprises can market their investment opportunities to a global audience. My efforts will continue in support of the regional center program. I look forward to helping Vermont and States across the country realize the full potential of this program through a permanent authorization.

I am also pleased that the conference retained an important measure to correct a serious inequity in immigration law commonly known as the widow penalty. Prior to the corrective amendment contained in this legislation, a foreign national widow or widower of a U.S. citizen was put into the untenable position of not only losing their spouse but losing their lawful permanent residence and path to U.S. citizenship. To underscore the nature of this injustice: In cases where a marriage was entered in good faith and without any fraud or ill intent, if the U.S. citizen spouse passed away during the period of conditional residency, the immigration agency took the position that the widow or widower no longer had standing to become a lawful permanent resident. This is wrong, and for a society that places such great value on family, a truly unfortunate position. The amendment in this legislation, which I and other Senators worked hard to ensure was retained in the conference report, will end this injustice.

The conference report also contains an amendment to extend a visa program that allows individuals from around the world dedicated to working on behalf of their religious faiths to come to the United States to do just that. I am pleased that the efforts I and others made to ensure this measure was retained have resulted in its adoption.

Finally, I commend the conference committee for rejecting an amendment that would have done little more than waste taxpayer dollars and cause further harm to the rights of property owners and the environment along our southern border. The conference committee wisely rejected an amendment that would have, in effect, required the Department of Homeland Security to tear down and rebuild hundreds of miles of barriers between the United States and Mexico that have already been constructed, at enormous expense to taxpayers. The Secure Fence Act, a piece of legislation I strongly opposed, directed the Department of Homeland Security to build border fencing and other barriers as a response to illegal border crossings. The Department carried out this legislative command during the Bush administration and constructed pedestrian fencing with vehicle barriers and other infrastructure. The amendment that was rejected by the conference committee would have compounded the negative effects that attended the border fence's original construction, and wasted taxpayer dollars in the process. I commend the conference for its wisdom in not accepting this amendment.

Mr. President, I commend the Senate for enacting the Leahy-Cornyn OPEN FOIA Act—a commonsense bill to promote more openness regarding statutory exemptions to the Freedom of Information Act, FOIA—as part of the Department of Homeland Security Appropriations Act, H.R. 2892. This FOIA reform measure builds upon the work that Senator CORNYN and I began several years ago to reinvigorate and strengthen FOIA by enacting the first major reforms to that law in more than a decade.

The Freedom of Information Act has served as perhaps the most important Federal law to protect the public's right to know for more than four decades. The OPEN FOIA Act will help to ensure that FOIA remains a meaningful tool to help future generations of Americans access government information.

The OPEN FOIA Act will make certain that when Congress provides for a statutory exemption to FOIA in new legislation, Congress states its intention to do so explicitly and clearly. In recent years, we have witnessed a growing number of so-called ''FOIA (b)(3) exemptions'' in proposed legislation—often in very ambiguous terms—to the detriment of the American public's right to know.

During a recent FOIA oversight hearing held by the Judiciary Committee, the president and CEO of the Associated Press, Tom Curley, testified that legislative exemptions to FOIA ''constitute a very large black hole in our open records law.'' The Sunshine in Government Initiative, a coalition of media groups dedicated to improving government transparency, has identified approximately 250 different statutory exemptions to FOIA that are used by Federal agencies to deny Americans' FOIA requests. This is an alarming statistic that should concern all of us, regardless of party affiliation or ideology.

By enacting the OPEN FOIA Act, Congress has taken an important step towards shining more light on the process of creating legislative exemptions to FOIA, so that our government will be more open and accountable to the American people. I thank Senators LIEBERMAN, GRAHAM and CORNYN, and Representative PRICE, for working with me on this measure. I also thank the distinguished chairmen and ranking members of the Senate and House Appropriations Committees—Senators INOUYE and COCHRAN and Representatives OBEY and LEWIS—for their support of this open government measure.

President Obama—who supported the OPEN FOIA Act when he was in the Senate—has demonstrated his commitment to enacting this measure, as have the many FOIA, open government and media organizations that have tirelessly supported this measure since it was first introduced in 2005, including OpenTheGovernmnet.org, the Sunshine in Government Initiative, the National Security Archive and the American Civil Liberties Union.

I have said many times before—during both Democratic and Republican administrations—that freedom of information is neither a Democratic issue nor a Republican issue. It is an American issue. I commend the Congress for taking this significant step to reinvigorate FOIA and I urge the President to promptly sign this provision into law.

Mr. CONRAD. Mr. President, I rise to offer for the record, the Budget Committee's official scoring of the conference report to accompany H.R. 2892, the Department of Homeland Security Appropriations Act for fiscal year 2010.

The conference report provides $42.8 billion in discretionary budget authority for fiscal year 2010, which will result in new outlays of $25.5 billion. When outlays from prior-year budget authority are taken into account, discretionary outlays for the conference report will total $46.6 billion.

The conference report includes $242 million in budget authority designated as being for overseas deployments and other activities for the Coast Guard. Pursuant to section 401(c)(4) of S. Con. Res. 13, the 2010 budget resolution, an adjustment to the 2010 discretionary spending limits and the Appropriations Committee's 302(a) allocation has been made for this amount in budget authority and for the outlays flowing therefrom.

The conference report matches its section 302(b) allocation for budget authority and is $2 million below its allocation for outlays.

The conference report includes provisions that make changes in mandatory programs that result in an increase in direct spending in the 9 years following the 2010 budget year. These provisions are subject to a point of order established by section 314 of S. Con. Res. 70, the 2009 budget resolution. The conference report is not subject to any other budget points of order.

I ask unanimous consent that the table displaying the Budget Committee scoring of the conference report be printed in the RECORD.

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

H.R. 2892, DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2010

[Spending comparisons—Conference Report (in millions of dollars)]

	Defense	General Purpose	Total
Conference Report:			
Budget Authority	1,567	41,209	42,776
Outlays	1,395	45,239	46,634
Senate 302(b) Allocation:			
Budget Authority			42,776
Outlays			46,636
Senate-Passed Bill:			
Budget Authority	1,582	41,335	42,917
Outlays	1,404	45,296	46,700
House-Passed Bill:			
Budget Authority	1,553	41,064	42,617
Outlays	1,390	44,931	46,321
President's Request:			
Budget Authority	1,365	41,473	42,838
Outlays	1,219	45,168	46,387
Conference Report Compared To:			
Senate 302(b) allocation:			
Budget Authority			0
Outlays			−2
Senate-Passed Bill:			
Budget Authority	−15	−126	−141
Outlays	−9	−57	−66
House-Passed Bill:			
Budget Authority	14	145	159
Outlays	5	308	313
President's Request:			
Budget Authority	202	−264	−62
Outlays	176	71	247

Note: The table does not include 2010 outlays stemming from emergency budget authority provided in the 2009 Supplemental Appropriations Act (P.L. 111–32).
The conference report includes $242 million in budget authority designated as being for overseas deployments and other activities for the Coast Guard.

AIR FORCE AERIAL REFUELING TANKER

Mr. HATCH. Mr. President, I rise today with my fellow cochair of the Senate Tanker Caucus, Senator CONRAD, to lend my support to the expedited acquisition of the next aerial refueling tanker for the Air Force. We were pleased to hear Secretary Gates announced on September 16 that he was giving oversight authority back to the Air Force for this vital procurement program. This program will ultimately produce 179 new KC–X aerial refueling tankers through one of the largest military procurement contracts

in history, worth approximately $35 billion.

Mr. CONRAD. While it is important to acknowledge that the KC–135 replacement flight path was turbulent at times, we rise to commend the Air Force for its plan to carry out the service's No. 1 recapitalization priority. The Air Force has presented a revamped KC–X plan after a rigorous review of previous acquisition strategy. The new plan belies the fact that the Air Force is committed to a fair, open, and transparent competition. On September 25 the draft Request for Proposal was released, restarting the process to ensure our men and women in uniform have an aerial refueling tanker that will continue our unmatched Global Reach anywhere on the planet. It goes without saying now is the time to produce a timely, cost-effective, war-winning system for the war fighter. The operations our nation is conducting today and will conduct for the foreseeable future and require our airmen, soldiers, sailors, and marines to operate in remote locations that need to be supplied and defended without delay.

Mr. HATCH. The current KC–X proposal has been refined to 373 key mandatory requirements that will allow this new tanker to ''Go to War'' on day 1. There are 93 additional areas that will enable offerors to enhance their proposals. If the bids are within 1 percent of one another, the 93 additional capabilities will be analyzed to break this virtual tie. If a competitor has a score that wins by more than one point then the award will go to that contractor. If the tally of additional requirements score is less than a one point difference, the contract will be awarded to the contractor with the lowest proposed price. After reviewing this process, we believe it is very clear and transparent. The contract award has been projected for May 2010.

Mr. CONRAD. Mr. President, we are concerned that the plan is only projected to purchase 15 tankers each year from the winning offeror. As you remember, the last contract was structured to purchase 19 tankers per year. It is imperative we find a way to increase the rate at which we purchase this new tanker especially given the time we have lost. If we stay on the current course, we will be relying on 80-year-old KC–135s when the last new KC–X comes off the assembly line—an absolutely unprecedented age for operational aircraft, especially such a critical enabler that we rely on to ensure America's Global Reach. We must accelerate this purchase.

Mr. HATCH. Mr. President, we are in great need of a new aerial refueling tanker now. No one can dispute this fact; the President, the Secretary of Defense, and the Secretary of the Air Force have all said so. President Eisenhower was our first President to see the current refueling tanker in service and it has served through every contingency for over almost 50 years. The venerable KC–135 is by far the oldest airframe in our inventory. The generation of men and women that defend our freedom deserve an aerial refueling tanker that capitalizes on the innovations of today while providing the taxpayer the best value.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Ms. MIKULSKI. Mr. President, I ask unanimous consent to speak for 7 minutes as in morning business.

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

RYAN WHITE AUTHORIZATION

Ms. MIKULSKI. Mr. President, I want to talk today about the Ryan White authorization. The Ryan White authorization passed last night by, really, unanimous approval. As many people know, the Ryan White legislation is one of the most important pieces of legislation to fund help for those people living with HIV and AIDS.

I want to comment on the importance of the bill, but essentially, in today's world, remind people of where we were and how far we have come. I want to talk about the importance of the bill. I could cite statistics from my own State. I have a State with one of the largest numbers of surviving AIDS patients, for which we are so happy and grateful. I have over 34,000 Marylanders living today with HIV and AIDS.

As I said, the passage was almost unanimous. The debate was noncontroversial. It was the same way in our Health, Education Committee. Our debate was quite civil. It was even policy wonkish. We were focusing on the details of funding, how to include more assistance for rural communities where there is a spike in the number of AIDS cases. It was actually quite civil and collegial—robust as it always is in the HELP Committee. But as I sat there and listened to my colleagues—and it was somewhat dull, the usual—I thought back to 1990 when it was not like that at all.

I say that today as we take up health reform. We are gripped by fear, we are gripped by frenzy where all kinds of myths and misconceptions are out there. The debate is prickly. It is tense. We don't listen to each other. We are out there, hurtling, hurling accusations.

I want to go back to a day in 1990, a day in the HELP Committee chaired by Senator Kennedy, when this young boy, Ryan White, came to testify. Ryan White was diagnosed with AIDS at age 13. He came to testify at the committee when we were trying to figure out what to do with this new disease that was gripping the land, where people in our urban communities were dying, adults who contracted it. Here was this little boy who came, who was so frail, who was so sick, and he wrenched our hearts that day as he talked about this new disease that he had gotten. He had gotten it through a blood transfusion.

But what he also told us about was what he was going through. He testified that day, mustering every bit of energy he had, speaking with verve and pluck about his plight, he told us about what had happened to him—how he was shunned in the class, how he was locked in a room, how children were forbidden to play with him. He lived a life of isolation and a life of desolation. He was treated like a pariah.

He wasn't the only one. Anyone who had AIDS in those days was greeted as if they were the untouchables. I remember it well. If you had AIDS, you were hated, you were vilified, you were viewed as a pariah. People were afraid to get near you, afraid to use the water fountain. If you heard someone in our office had AIDS, you didn't want to use the same bathroom.

Firefighters and emergency people were afraid to touch people bleeding at the site because they were concerned they could get it. Funeral homes would not bury people who had AIDS. I remember a little girl who died in my State who had AIDS, and only one funeral home in the Baltimore area would bury her. This is the way it was then.

As that little boy spoke, we were gripped by tears and we were gripped by shame, we were so embarrassed at what was happening in our country. Both sides of the aisle were touched. The Senate stepped up and they did it on a bipartisan basis. I was so proud that day when Senator Ted Kennedy, whom we miss dearly, said: Tell me, young man, what can we do for you?

And he said: Help the other kids. Help the other people who have AIDS.

Ted said: I certainly will.

And Senator ORRIN HATCH immediately stepped up—sitting next to Kennedy—and said: I want to be involved. I want to work on that legislation.

Ted Kennedy, ORRIN HATCH, CHRIS DODD, TOM HARKIN, BARBARA MIKULSKI, NANCY KASSEBAUM—we all came together. We worked on a bipartisan basis and we did move the Ryan White bill against the grain of many people in this country and in the face of the fear and frenzy.

As Ryan White left with his mother that day, as he walked out in a very halting way, he was gripped by a media frenzy. The noise went on. They were pushing and shoving to try to get a picture of this poignant little lad. Senator Kennedy jumped up, built like the linebacker he once was in Harvard, and ran out and he said, ''BARB, come with me; CHRIS, get over there; ORRIN, grab that chair.'' We all ran out and Ted Kennedy literally threw himself in front of Ryan White to protect him from being run over by TV cameras.

Again, both sides of the aisle, we were there—Ted, calling this out—CHRIS, you go there; BARB, open the door; ORRIN, stick with me, and ORRIN stuck with him. They put their arms around him and got him into a safe haven in one of our offices.

Ted Kennedy literally put himself on the line that day of fear and frenzy, and Republicans were right there with

him, helping him out to get that young man to a safe room. Ted Kennedy protected that little boy that day, literally and figuratively, and he had the support of the committee.

So as we move ahead today, as we reauthorize the Ryan White program for 4 more years, remembering that it is the largest source of Federal funding for HIV/AIDS programs, I want us to remember how we worked together, what it is like when we literally stand up for each other. Ted Kennedy literally protected that child 19 years ago. He stood up and protected the people who count on us to protect them every day. It was a moving day. It was a lesson to be learned today—Ted Kennedy leading the way, the ranking member by his side, all of us coming together.

What I also remember that day was not only our bipartisanship and our compassion and our civility with this little boy and with each other, I remember the angry mob out there, worrying about people who had AIDS, finger pointing. I guess the lesson of today is don't listen to the mob. Don't be swayed by fear and frenzy. Let's get rid of misconceptions and stop accusing each other. Let's start to work together. Let's listen to each other.

Maybe 20 years from now when we look back on the debate of health insurance reform, we will pass it and make it, and it will be so usual and customary, and we will be proud of what we did as we are proud of what we did today. Ryan White is no longer with us. But what he helped inspire a nation to do is. I thank him and his family and all who endured during that time.

Now I call upon us again. Let's return to civility, bipartisanship. Let's stick to the facts. Let's stick with each other.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. CHAMBLISS. Mr. President, I rise today to speak about the conference report to accompany the Department of Homeland Security Appropriations bill.

When this bill was originally before the Senate, I joined 83 other Members of this body in supporting it.

But at this time I cannot support the conference report because it includes language that was not included in the Senate-passed bill relating to the detainees being held at the Guantanamo Bay Naval Facility, or Gitmo.

This bill would prohibit the transfer, release or detention in the United States of any of the detainees held at Gitmo as of June 24, 2009. However, it does allow detainees to be brought into the U.S. for prosecution. I cannot support this. I have been very outspoken on this issue and believe it is wrong to bring these detainees into our country to try them in our criminal courts. These terrorists have committed violations of the laws of war and should be held and prosecuted according to the procedures Congress laid out in the past.

Prosecuting these individuals in our U.S. courts simply will not work and there is too much at stake to grant the unprecedented benefit of our legal system's complex procedural safeguards to foreign nationals who were captured outside the United States during a time of war. Allowing these terrorists to escape conviction, or worse yet, to be freed into the U.S. by our courts, because of legal technicalities would tarnish the reputation of our legal system as one that is fair and just. Prohibiting the detainees from entering into the U.S. is one small step in the right direction. However, this legislative loophole is a step in the wrong direction.

In May, the Senate voted 90 to 6 to prohibit any of these hardened terrorists from being brought to the United States. Despite this clear objection, the administration transferred one detainee, Ahmed Ghailani, to New York City in June. He is facing a trial in the Southern District of New York for his role in the August 7, 1998 bombings of two U.S. embassies in Africa. Some of my colleagues in the Senate have touted this as an example of how we can bring criminal charges against the Gitmo detainees and try them in our courts. However, Ghailani was indicted on March 12, 2001, a full 6 months prior to the terrorist attacks of 9/11 and after a full investigation by the Federal Bureau of Investigation. The case against Ghailani was built long before he was transferred to Gitmo in 2006. To imply that other detainees, many of whom the FBI has not investigated or collected evidence against, may be prosecuted similarly in U.S. courts is naïve. Worse yet, just recently, the Attorney General ordered the U.S. attorney not to seek the death penalty in this case, despite the fact that his participation in the bombings resulted in the death of over 200 people and injured over 4,000. In contrast, six of the charges brought against Ghailani in his military commission carried the death penalty.

Now there are press reports that the administration is considering transferring Khalid Sheikh Mohammed or KSM to the United States. KSM is the self-proclaimed, and quite unapologetic, mastermind of the 9/11 attacks. KSM admitted he was the planner of 9/11 and other planned, but foiled attacks against the U.S. In his combatant status review board, he admitted he swore allegiance to Osama bin Ladin, was a member of al-Qaida, was the Military Operational Commander for all foreign al-Qaida operations, and much more. These admissions are unlikely to be admitted in a Federal court. Bringing KSM to a U.S. court will do nothing but allow defense lawyers to expose our intelligence sources and methods used in interrogating KSM to the world.

Time after time since President Obama's January 22, 2009 announcement stating that he would close Gitmo within a year, I have seen hasty and ill-advised comments and action taken with respect to the Gitmo detainees. The detainees at Guantanamo are some of the most senior, hardened, and dangerous al-Qaida figures we have captured. It is imperative that the President satisfy the concerns of Congress and the American public before we should fund the transfer of any of these detainees to U.S. soil for any reason.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I thank the Senator from Georgia for his comments. Having served on the Judiciary Committee and the Armed Services Committee with Senator CHAMBLISS, we had a number of hearings on these issues. I agree with Senator CHAMBLISS that there is no practical alternative to the process we are using. It is right and just to do so, to use the one, at least, we have been using at Guantanamo Bay.

To create trials in Federal district court using American rules of procedure such as Miranda and the exclusionary rule is not the kind of thing that ought to be done in this case. He has given a lot of thought to it, and I appreciate it. In essence, he is disappointed that the conference committee altered language we passed by an overwhelming majority in this Senate. That is exactly what I am going to talk about today.

I am disappointed that those in the leadership in this Congress, without discussion or debate, have decided to dramatically alter the amendment I offered that was accepted unanimously to the Homeland Security appropriations bill in this Congress.

On July 8, 2009, the Senate rejected, by a vote of 44 to 53—I think at least 13 or more Democrats voted this way—a motion to table the E-Verify amendment I offered to the Department of Homeland Security bill. After the motion to table was defeated, the Senate then unanimously accepted my amendment. The amendment made the program permanent, the E-Verify Program, which allows businesses to run virtually an instant computer check to see if the person who has applied before them is legally able to work in the United States. The amendment I offered would have made that E-Verify system permanent and it would have made it mandatory for government contracts. Some States have mandatory rules; businesses are voluntarily doing it. It would simply say: You are not going to get a contract from the taxpayers of the United States if you are not legally working in the United States. How simply is that? But the version of the bill reported from conference is dramatically different. It contains only a 3-year extension of the E-Verify Program and does not include any of the Federal contractor language. We passed a lot of stimulus money to try to create jobs for Americans this year, and it should be for lawful people, not unlawful.

This is the third time this Congress and the leadership in this Congress have either removed, changed, or blocked attempts to make this successful program permanent, against the overwhelming will of the American people, actually, and against the will of the Obama administration—at least in their verbal statements—and the express will of both the House and the Senate.

So this is how things happen. I think this is one of the reasons people are angry with Congress. Some people say they are angry at immigrants. I do not think that is accurate. I think they are angry at Congress for failing to take commonsense steps to create a lawful system of immigration and end the lawlessness that exists.

The mechanism is this: We pass it. Members of the Senate vote for it. They go home and say: I voted to make E-Verify permanent. I voted to make it apply to contractors. I am sorry it did not happen. Well, who makes this happen? Who changes the language? It is done in secret in conference in a nonopen way. They meet and just change it. They think nobody is going to know and they can just get away with it. It is the reason people are not happy with Congress.

In addition, the Democratic leadership on the conference committee—and they are all appointed by the Speaker and by the majority leader. So the majority of both Houses, the House and the Senate, are clearly Democratic Members. I do not want to make this such a partisan thing, but I guess it is an institutional thing of frustration that our Democratic Members have voted for these reforms, for these good ideas, but yet somehow it goes into conference and it gets eliminated, gets undermined so it does not become law.

There were three other amendments stripped that dealt with immigration issues that had overwhelming support: A DeMint amendment that passed in the Senate called for completing the 700 miles of double-layer fence called for by the Secure Fence Act that we passed overwhelmingly some time ago, and that was taken out. A Grassley amendment that would have allowed employers to reverify employees through E-Verify was taken out. A Vitter amendment that would have precluded the rescissions of the no-match rule was taken out.

So together with the recent actions of this administration—and they have been sending mixed signals, but their actions sometimes speak louder than words. They have backed off of the detention policy. Now I see they are putting people illegally coming into our country in hotel and motel rooms. They watered down the 287(g) Program which allows local law enforcement to work with the Federal officials to help them identify those who are illegally in the country in a way that makes sense. It is a limited power, but it is very helpful. Those are some of the things this administration has backed off on.

So I think the conclusion we reach is that the majority in control of this Congress seems to be committed to blocking any congressional action that actually seeks and is effective in enhancing law enforcement. Some say: That is a harsh thing to say, JEFF. That is not true. I will just repeat it. If you know what the system is about, you know how the debate is going on in this Senate and in the House, you would be aware of the fact that E-Verify is very important and that it should apply to people who get government contracts. Why do they keep taking it out?

Back in February, two amendments were unanimously accepted to the House stimulus bill, the $800 billion bill that was supposed to create jobs in America. Those amendments related to the E-Verify Program. One was offered by Congressman KEN CALVERT of California for a 4-year extension of the E-Verify Program. It was identical to the reauthorization language that passed the House on July 31, 2008, by a vote of 407 to 2. Another was offered by Congressman JACK KINGSTON, and it prohibited funds made available under this $800 billion stimulus bill from being used to enter into contracts with businesses that do not participate in this E-Verify system.

It is growing. Millions of checks are being done by this system. It is no burden on businesses. So it would say, if you did not use that system, you could not get this stimulus money to do things, build things with.

The provisions of the bill were both unanimously accepted without a vote by the House Appropriations Committee. Furthermore, the provision that extended the program was also overwhelmingly approved by the House last July by a vote of 407 to 2.

One of the main purposes of the stimulus bill was to put Americans back to work. It was common sense—common sense—to include a simple requirement that the people hired to fill the stimulus-created jobs be lawfully in our country and lawfully able to work.

I tried to offer an amendment, at that time, that incorporated both the House provisions in the Senate stimulus bill when the stimulus bill was being considered in the Senate, but it was blocked on three separate occasions by the Democratic leadership. I can only conclude from that they did not want it. I knew, if we could get a vote, we would have a bipartisan Democratic and Republican vote for it.

My amendment only incorporated the short 5-year extension, but I was not even allowed to get a vote. As I predicted at that time, once the bill went to conference, the conferees would strip the E-Verify provisions from the final version of the economic stimulus package without any open discussion or debate. That is exactly what they did. I hate to say it, but the actions seem to send a clear signal that our leadership wants to use taxpayers' money to employ people who are in this country illegally.

That is a harsh thing to say. But if you do not want that to happen, why don't we take some steps to do something about it? Why wouldn't we require people who get government money—taxpayers' money that is supposed to be designed to create American jobs—why wouldn't we want to at least take this modest step to try to see that people illegally here do not get those jobs?

Furthermore, in March, when I tried to offer an identical amendment to the Omnibus appropriations bill, it was tabled by a vote of 50 to 47. This proves to me there are some powerful forces out there somewhere still alive who want to block this important step.

It is important we permanently reauthorize this successful E-Verify Program, which is currently set to expire when the current continuing resolution ends. We should do it particularly now that we are in a time of serious economic downturn and unemployment.

E-Verify is an online system operated jointly by Homeland Security and the Social Security Administration. Participating employers can check the work status of new hires online by comparing information from an employee's I–9 form—that is their employment form—against the Social Security and DHS databases. It is done like that. It takes just a few minutes.

E-Verify is free to businesses and is the best means available for determining the employment eligibility of new hires and the validity of their Social Security numbers, instead of the so many bogus numbers many of you have read about.

As of October 3 of this year—2009—over 157,000 employers, businesses, are enrolled in this program. This represents over 600,000 hiring sites nationwide. Over 8.5 million inquiries were run through the system in 2009 and over 90,000 have been run since October 1 of this year—in 20 days.

The Homeland Security Secretary—President Obama's Secretary—Janet Napolitano, has spoken highly of the E-Verify Program. She called the program ''an integral part of our immigration enforcement system''—an integral, essential part of our enforcement system. There is no doubt about it, in my view. Attempts to make the program permanent have been thwarted time and time again during this Congress.

According to Homeland Security, 96.1 percent of employees are cleared to go to work immediately under this online system, and growth continues at over 1,000 new employer users each week.

Of the remaining 3.9 percent of queries with an initial mismatch—so there are 3.9 percent who are not cleared immediately—of those, only .37 percent, about a third of 1 percent, were later confirmed to be work authorized. So it looks like about 80, 90 percent of the people who did not get immediate clearance—really, more than that—were not authorized to work legally in America. Only .37 percent of those

later were shown to be held up improperly—or not ''improperly,'' just being held up. Maybe they entered a wrong Social Security number by mistake.

Employers get an advantage. An employer that verifies work authorization under E-Verify has established a rebuttable presumption that the business has not knowingly hired an illegal alien.

Recently, the Bureau of Labor Statistics reported that the unemployment rate in the United States has jumped to 9.8 percent—basically, double what it was a year or so ago. That is 15 million unemployed. This is the highest unemployment rate in 25 years.

Immigration by illegal immigrants has had a serious and depressing effect on the standard of living of lower skilled American workers. That is a fact, in my view. The U.S. Commission on Immigration Reform, chaired by the late civil rights pioneer, Barbara Jordan—and they had a big study of this—found that ''immigration of unskilled immigrants comes at a cost to unskilled U.S. workers.''

The Center for Immigration Studies has estimated that such immigration has reduced the wage of the average native-born worker in a low-skilled occupation by 12 percent or almost $2,000 annually.

In addition, Harvard economist and author of perhaps the most respected book on immigration—he goes into great detail of economic studies and information that he analyzed—Professor George Borjas, himself born in Cuba, has estimated that immigration in recent decades has reduced the wages of native-born workers without a high school degree by 8.2 percent.

E-Verify is working. In fact, the program is so successful that Secretary Napolitano recently said:

> The Administration strongly supports E-Verify as a cornerstone of worksite enforcement and will work to continually improve the program to ensure it is the best tool available to prevent and deter the hiring of persons who are not authorized to work in the United States.

That is a strong, clear, good statement the Secretary has given, and it is common sense.

Recently confirmed Citizenship and Immigration Services Director Alejandro Mayorkas said:

> I believe E-Verify is an effective law enforcement tool.

In February of 2009, Doris Meissner, former head of immigration under President Clinton, said:

> Mandatory employer verification must be at the center of legislation to combat illegal immigration . . . the E-Verify system provides a valuable tool for employers who are trying to comply with the law. E-Verify also provides an opportunity to determine the best electronic means to implement verification requirements. The Administration should support reauthorization of E-Verify and expand the program. . . .

Alexander Aleinkoff—President Clinton's INS official and an Obama administration Department of Homeland Security transition official—calls it a ''myth'' that ''there is little or no competition between undocumented workers and American workers.'' He is right about that. They can say this is not true all day long, but anybody who observes what is happening knows the large influx of low-skill workers pulls down the wages of hard-working Americans who did not get a high school diploma who are trying to take care of their families and survive in a competitive world. It is a fact. We need to understand that.

Even the distinguished majority leader supports the program. He wrote a letter in March of this year saying:

> I strongly believe that every job in our country should go only to those authorized to work in the United States. That is why I strongly support programs like E-Verify that are designed to ensure that employers only hire those who are legally authorized to work in the United States, and believe we need to strengthen enforcement against employers who knowingly hire individuals who are not authorized to work. I support reauthorization of the E-Verify program, as well as immigration reform that is tough on lawbreakers, fair to taxpayers and practical to implement.

This is one I hope we can all agree on. But I do not know how it came out that this language was gutted out of the conference report, once again.

Since 2006, 12 States have begun requiring employers to enter new workers' names into the system, which checks databases, including Arizona, which passed the law while our current Homeland Security Secretary, Janet Napolitano, was Governor of Arizona. Colorado, Georgia, Minnesota, Mississippi, Missouri, North Carolina, Oklahoma, Rhode Island, South Carolina, Tennessee, and Utah have this system where their employers that have contracts in government work—actually any employers have to use the system before they are hired.

Secretary Napolitano has also said:

> I'm a strong supporter of E-Verify. . . . You have to deal with the demand side for illegal immigration, as well as the supply side, and E-Verify is an important part of that.

In January of 2009, the Washington Post reported that Secretary Napolitano said:

> I believe in E-Verify. I believe it has to be an integral part of our immigration enforcement system.

President Bush signed Executive Order 12989 last year. I think, in many ways, he was slow to come to realize how important creating a lawful system of immigration was. But he made some progress toward the end and he made this statement and took this action. He said:

> Contractors that adopt rigorous employment eligibility confirmation policies are much less likely to face immigration enforcement actions, because they are less likely to employ unauthorized workers, and they are therefore generally more efficient and dependable procurement sources than contractors that do not employ the best available measures to verify the work eligibility of their workforce. . . . It is the policy of the executive branch to use an electronic employment verification system because, among other reasons, it provides the best available means to confirm the identity and work eligibility of all employees that join the federal workforce. Private employers that choose to contract with the federal government should meet the same standard.

So President Bush issued that Executive Order, that private employers that choose to contract with the Federal Government should meet the same standard. Basically, what happened was, President Obama delayed it. They have since issued a policy that larger businesses should use the system, for which I give them credit. So the Federal Government should meet the same standard. He meant it should apply. The Obama administration has made, as I understand it, an executive order that requires larger businesses to use this system for the current time but not smaller businesses, and it is not a part of law.

Last June, when Homeland Security designated E-Verify as the electronic employment eligibility verification system that all Federal contractors must use, Secretary Chertoff—the Secretary of Homeland Security—said this:

> A large part of our success in enforcing the nation's immigration laws hinges on equipping employers with the tools to determine quickly and effectively if a worker is legal or illegal. . . . E-Verify is a proven tool that helps employers immediately verify the legal working status of all new hires.

So some have argued it is too costly and too cumbersome. However, a letter to the Wall Street Journal from Mark Powell, a human resources executive with a Fortune 500 company, said it is free; it takes only a few minutes and is less work than a car dealership would do checking a credit score prior to selling a vehicle or taking a test drive.

Well, that is true. How else can we explain so many employers voluntarily signing up? I think the short-term extensions only discourage participation in the E-Verify Program and leave us with a lack of assurance in the future we need.

With regard to the contention that there are some mismatches, as I said, only .37 percent—less than 1 percent—of the people whose numbers don't check out are found to be improperly checked out. Truthfully, most of them got the right answer.

So I would conclude by saying a lot of progress has been made to make the system even better than it was. Over 60 percent of foreign-born citizens who have utilized this option and more than 90 percent of those phone calls have led to a final ''work authorized'' determination. I think we are on the right track. I think we should make this permanent. We absolutely should make it so that anyone who obtains a contract or a job as a result of government taxpayer money should be legally in the United States. If they are not, they shouldn't get the job. It should be set aside for American taxpayers. I thank the Chair.

Just before I conclude, once again, let me express frustration that what

was passed so overwhelmingly, somewhere behind closed doors—the same place they are meeting right now to write a health care bill. We don't know where they are or what they are talking about, but a group is meeting to try to cobble together the two or three or four bills that are pending out there with something they will bring to the floor, and nobody has even seen it yet. We are having too much of that. I think it is eroding public respect for the Congress, and I can understand why the American people are angry with us.

I thank the Chair and yield the floor.

The PRESIDING OFFICER (Mr. UDALL of Colorado). The Senator from Louisiana.

Mr. VITTER. Mr. President, I rise to join my distinguished colleague from Alabama, as well as our colleague from South Carolina, who will come to the floor soon to talk about this Department of Homeland Security Appropriations conference report and specifically the major provisions which had broad bipartisan support which were stripped out of the conference report in the dead of night. I wish to thank my colleague from Alabama for all his work on this issue in general, particularly the E-Verify system. I strongly support the E-Verify system. I strongly support expanding it aggressively. It is part of a solution. It is not the whole solution; no one item is. But it is an important part of the solution to get our hands around immigration enforcement, particularly at the workplace. So I thank my colleague for that work.

Mr. SESSIONS. Mr. President, will the Senator yield for a question?

Mr. VITTER. Absolutely, I will yield.

Mr. SESSIONS. The Senator has served in the House and the Senate and knows how conference committees work. Isn't it true that the majority of the Senate conferees would be appointed by the majority leader, and a majority of the House conferees would be appointed by the Speaker?

Mr. VITTER. Absolutely.

Mr. SESSIONS. Isn't it a tradition that normally conferees appointed by those leaders tend to follow their lead in how they vote in conference?

Mr. VITTER. Absolutely.

Mr. SESSIONS. The Senator had an amendment that was stripped out, as I did, dealing with the immigration issue. It seems to me odd that amendments receiving such high votes in both the House and the Senate would be stripped out of conference. Would you agree that is an odd thing to happen?

Mr. VITTER. I absolutely agree with my colleague.

I would point out in that vein, the Sessions amendment got broad support. When the Democratic leadership handling the bill on the floor asked to table the amendment, that was rejected 53 to 44. In a similar way, they attempted to table the amendment of our colleague from South Carolina, and that motion was defeated 54 to 44. My amendment was adopted by unanimous consent. Yet with that clear support from the Senate floor, the leadership on the other side apparently went to conference and took out those amendments in the dead of night. I find that worrisome. I find it worrisome in terms of the process. I find it worrisome in terms of immigration reform and where we are apparently headed.

Again, as I said, these were three significant amendments put in this bill on the Senate floor. All three have been stripped out of this conference report.

Let me focus for a minute on my proposal. When the bill was on the Senate floor, my amendment, which was Senate amendment No. 1375, was passed by unanimous consent. So literally no one in the entire body, Democratic or Republican, objected. Essentially, everyone agreed to put this amendment on the bill. The amendment was to prohibit funding to the Department of Homeland Security if they implemented any changes in a final rule requiring employees to follow the rules of the Federal Social Security no-match notices. This, as E-Verify, is an important piece of the puzzle. It is an important piece of the solution.

In August of 2007, the Department of Homeland Security introduced its no-match regulation. This clarified the responsibility of employers who receive notice that their employees' names and Social Security numbers don't match up with the records at Social Security.

So under the rule, employers receiving these notices who did not take corrective action would be deemed to have constructive knowledge that they are employing unauthorized aliens. So, in other words, the intent and the way the rule worked was very simple and straightforward. If records went in to the Department of Homeland Security, if a name and a Social Security number didn't match according to Social Security records, then the Federal Government would notify the employer and would say: Time out; you have a problem. You need to do something about it. If it is a mistake, we need to figure that out, but otherwise it seems as though you are hiring an illegal. So stop and either clear up the mistake or do not hire that person.

This rule provided employers with clear guidance on the appropriate due diligence they should undertake if they received that sort of letter from the Federal Government. So employers who received no-match letters would know they have a problem: Either their record keeping needs to be improved or they have hired illegal workers. The DHS no-match rule gives companies that want to follow the law a clear path to safety. Companies that prefer to ignore the problem or have chosen to run their business with illegal labor cannot be forced to act responsibly, so they do so at their peril under this rule. Since the Social Security letter leaves a clear record for DHS investigators to build a case against employers, it makes the entire system far more workable.

My amendment simply said we are going to keep that new rule in place. It is important for enforcement. It is important for workplace enforcement. It is important to get our hands around the problem of illegal immigration because of the common sense behind that concept. My amendment was adopted on the Senate floor unanimously, by unanimous consent.

As I said, Senator SESSIONS had an important amendment which he just talked about to expand the E-Verify system. That amendment was actually opposed by some, and there was a motion to table the amendment, but that motion to table was defeated 53 to 44. Similarly, Senator DEMINT of South Carolina had an important immigration enforcement amendment. He will be coming to the floor to talk about that this afternoon. His amendment required the completion of at least 700 miles of reinforced fencing along the southwest border by December 31, 2010. Again, his amendment was opposed by some liberals on the Senate floor. They moved to table that amendment but, again, by a significant vote that motion to table was defeated 54 to 44.

So if these amendments are adopted by comfortable, if not unanimous, margins in the Senate, why are they being stripped in the dead of night in the conference committee report? Unfortunately, I think it is clear this Congress, under the Democratic leadership, and this administration want to take a very different approach to immigration, and they are not serious about any of these enforcement measures.

I think that is a shame because these three amendments and other good enforcement ideas I believe represent the common sense of the vast majority of the American people. To me, this harkens back to the major immigration reform debate we had in the summer of 2007 when a big so-called comprehensive immigration reform bill came to the floor of the Senate. It didn't have enough enforcement, in my opinion. It did have a huge amnesty program instead. So by the end of the debate, the American people spoke loudly and clearly. They said: No, we want enforcement. We want to do everything we can on the enforcement side first. We don't want a big amnesty.

That so-called comprehensive bill was defeated by a wide margin. After that seminal event, so many on the Senate floor, including many who had backed that bill, Senator MCCAIN among them, said: OK, we heard the American people. We heard you loudly and clearly. We need to start with effective enforcement. We need to start with commonsense measures, such as a certain amount of fencing, such as E-Verify, such as the Social Security no-match rule. Yet when we put those commonsense measures in this bill, what happened? In this Congress, led by Democratic leadership, under this administration, it was just stripped out of the conference committee report.

Sure, it got big votes on the Senate floor; sure, it has widespread House

support; sure, the Vitter amendment was adopted by unanimous consent. We don't care. We are going to strip it out.

The message is loud and clear. The message is, we don't care what the American people have said. We don't care what they said in the summer of 2007. We don't care what they say over and over and over again about these issues—no-match, E-Verify, fencing—we are just going to oppose any of those commonsense enforcement measures.

I truly believe the second half of where the leadership in this Congress and this administration is coming from is the same thing as the second half of that immigration reform bill in 2007: a big amnesty program with little to no enforcement, a big amnesty program.

We need to listen to the American people. We don't need to play games and say we are supporting provisions and then have them stripped out of conference reports. We need to be more straightforward, more honest in what we are truly about in attacking this problem. Unfortunately, this conference report is an example of exactly the opposite.

I urge my colleagues to pay attention to what is happening because so many folks in this body are speaking out of both sides of their mouth. They are saying: Oh, yes, fence, sure; E-Verify, absolutely; social security no-match, sure. Then they get certain leaders of the conference committee to do their dirty work and just strip those provisions. They are ignoring the will of the American people. They are rejecting commonsense enforcement, and according to many reports, the Obama administration and its leaders in the Congress are going to attempt another push for broad-based amnesty.

We need to listen to the American people and not play games. In particular, we need to stop this game playing overall. Senator SESSIONS, my distinguished colleague from Alabama, was right when he said these sorts of antics—talking out of both sides of our mouths on this issue, stripping so-called popular amendments from a conference committee report—these antics are exactly what is eroding confidence in Congress overall. This is exactly what the American people are so frustrated and, in fact, so scared about with regard to many other issues, such as health care.

I believe this is of real concern as we go into the health care debate because, quite frankly, what does it matter what we adopt on the Senate floor when the conference committee work is going to be handled, perhaps, just like this Homeland Security conference committee was. People can have little confidence based on our votes on the Senate floor. The conference committee work can be diametrically opposed to it on significant issue after significant issue, just as it was on no match, on E-Verify, on fencing.

We need to stop eroding public confidence in that way. We need to do what is, in fact, our first job in the Congress, House and Senate, which is to listen to the American people and, yes, represent the American people.

I am afraid this DHS conference report, with its significant omissions in the area of Social Security no match, E-Verify, and fencing, is a sign that this leadership in Congress and this administration are not prepared to do any of that. I lament that.

I urge all of our colleagues to come back together and demand progress on E-Verify, on no match, and on fencing, and to stop this game playing as we move to other crucial issues, including health care.

Mr. President, I yield the floor.

THE PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. CARPER. I thank the Chair.

(The remarks of Mr. CARPER and Mr. KAUFMAN pertaining to the introduction of S. 1801 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. CARPER. I thank the Chair, and with that, 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. MURRAY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mrs. MURRAY. Mr. President, I ask unanimous consent that the time during the quorum call be equally divided between both sides.

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

Mrs. MURRAY. 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. DEMINT. 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. DEMINT. Mr. President, I apologize for your having to listen to me again this week, but I thank you for recognizing me, and actually I want to talk about something pretty serious.

I think as Americans look in—and I guess in our relationships here—cynicism is becoming so much a part of what we are doing. As a matter of fact, trying to stop cynicism here in Washington is like trying to stop water from flowing downhill. Every time the American people succeed in forcing sunlight and transparency on the political process, politicians find another corner to hide in. The latest trick is the majority's practice of accepting popular amendments to legislation while fully intending to strip those amendments out of the final bill that we send to the President. There were at least four of these amendments stripped from the conference report that is in front of us today.

One of the amendments—authored by Senator SESSIONS—permanently authorized the E-Verify Program and made it mandatory for all government contractors. That is very important to the American people, very important to employers, to be able to determine whether they are hiring a worker who is here legally. That was thrown out.

Senator VITTER had an amendment which allowed the implementation of what is called the ''no match'' rule, which essentially says that if a name and a Social Security number don't match, that the employer is immediately identified. That was thrown out.

Senator GRASSLEY had an amendment to allow employers to voluntarily verify the status of current employees. That was thrown out.

Then there was my amendment to require the Department of Homeland Security to complete the 700-mile reinforced fence along the Southwest border by the end of 2010. It passed on this Senate floor 54 to 44. This amendment was stripped, along with all the others.

As always, Washington politicians respect the people's wrath when the cameras are on us, but they do not respect the people's opinions when the cameras are turned off. As everyone here is aware, the American people are adamant about securing our southern border. It is a matter of security, it is a matter of jobs, it is a matter of drug trafficking and weapons trafficking. Thousands of Mexicans have been killed because of our unwillingness to control our own border.

In 2006, overwhelming public opinion forced Congress to order the construction of a 700-mile reinforced double fence by 2010. Both the Bush administration and the Obama administration have dragged their feet, and so far we only have 34 miles actually completed. The Department of Homeland Security claims 661 miles are completed, but that is not according to the law we passed because they count single-layer fencing and vehicle barriers, which do nothing to stop pedestrian traffic. My amendment would have reasserted a promise—a law—that Congress has already passed. Leaders of both parties have repeatedly tried to break this promise.

We are learning there is almost nothing that politicians won't do to get out of promises they make in the daylight, especially if they can pretend to keep the promises. This is staggering cynicism, and it is undemocratic. It violates our whole principle of the rule of law. But this problem goes well beyond our unkept promises to cure our southern border. Earlier today, we considered the conference report on Energy and Water—the Energy and Water spending bill. That report also stripped out a popular amendment offered by Senator COBURN to require all reports under the law to be made available to the public.

The majority is now so afraid of public scrutiny that they have to go behind closed doors to complete amendments they earlier accepted to guarantee transparency. This is now a pattern and a practice of the least transparent Congress in American history. That should give all of us pause, especially when we consider these same politicians are right now behind closed doors planning the takeover of one-sixth of our economy, if this health care bill succeeds.

They have promised the bill won't add to the deficit, promised it won't force people off their health care plans, promised it won't pay for abortions or cover illegal immigrants, and promised thousands of other things. The problem is we don't know what is in the bill. In the context of this back-room amendment stripping, these promises cannot be delivered, and this process cannot be trusted.

I encourage my colleagues to recognize that we need to make good on our promises. Both parties in this Congress have talked a lot about ethics and transparency. When we accept a bill on the floor, with the American people looking, but then strip it when the American people are not looking, our whole process is denigrated. This bill in particular, containing issues that deal with illegal immigration, which our country is so engaged in—and particularly at a time when people are losing their jobs, many times to workers who are not legal—is a very sensitive issue to the American people.

For this amendment to be voted on and passed and then stripped out makes no sense at all. I encourage my colleagues not to support this conference report. It has stripped out the will of the American people.

I yield the floor.

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

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

The Senator from Kansas is recognized.

Mr. BROWNBACK. Mr. President, I rise to speak on this bill, on a particular issue of interest to my State and I think to the country on a new National Bio-Agriculture facility to research new diseases and problems that can come in on animal health. In this particular bill, Senator ROBERTS and I have been working for some period of time to get funding for this facility to go forward. This was a national competition that took place for the location of the NBA facility. A number of States competed for it. It was determined that Kansas would be the primary location for this to occur. The initial funding of $32 million is in this conference report. I am delighted that the National Bio-Agriculture facility, to be located in Kansas, is getting its initial funding.

As one of the responsible acts of this body, the fullest amount of the funding for this will not come until the Plum Island facility is sold. When that is sold, then that money is to go to build this facility that will research a number of different, difficult diseases in the animal health industry—foot-and-mouth disease and a number of other ones are to be researched. The facility has to be built safely so the containment facility, its initial design, is a metal structure on top of a concrete structure on top of another concrete structure in which the animals and the pathogens will be contained.

To make sure this structure is safe, the facility design will be reviewed by the Department of Homeland Security and the DHS review will also be reviewed by the National Academy of Sciences, so it is an additional review on top of a review process. That may seem like redundancy to a lot of people, but there has been a lot of concern about moving FMD research into the mainland from Plum Island off of New York.

I think it is prudent for us to do this research. I think it is important for us to research cures in this area. I think it is also prudent for us to make sure that the facility is well built and one from which we can be certain these pathogens will not be released.

The passage of this final bill is a huge step in locating this NBA facility in Kansas, providing additional funding for this. I believe there is no better place than in Kansas to do this research. I am not just saying that because it is my State—although that is a big part of it—but 30 percent of the animal health industry globally is located within 100 miles of Kansas City. It is a place where there is a lot of this research taking place. The scientists are already there, the companies are already developing these products to take care of animal health problems. They are there and we can build on that success at a national level.

I am delighted to see this moving forward in a responsible fashion. This is the initial piece. The bigger piece comes after the sale of Plum Island, which is appropriate. I am hopeful my colleagues will see fit to doing that this next year.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, later today—in fact, as I understand, in a very short time—the Senate will vote on the conference report to accompany the fiscal year 2010 Department of Homeland Security appropriations bill. This conference report spends approximately $42.7 billion, 6.6 percent above last year's bill. I am sure many American households would love a 6-percent increase in their budget but cannot afford it. The Federal Government can't afford it either.

Specifically, this conference report contains 181 congressionally directed spending items totaling over $269 million. As far as I can tell, none of these projects was requested by the administration, authorized, or competitively bid in any way. No hearing was held to judge whether these were national priorities worthy of scarce taxpayers' dollars.

By the way, as I recall, when we first started with the Homeland Security Appropriations bills, we had decided at that time there would be no earmarks. So the next time we didn't do them. Then there are a few more. Now there are 181 of them—181, totaling over $269 million. I do not need to remind Americans—I might want to try to keep reminding the appropriators—the Federal deficit now stands at $1.4 trillion. It is an all-time high. Americans are losing their jobs and their homes at record rates. What are we doing? We just keep on spending.

Let's take a look at some of the earmarks included in this conference report: $4 million for the Fort Madison Bridge, in Fort Madison, WI. How is that related to homeland security? There is $3.6 million for a Coast Guard Operations Systems Center in West Virginia. Why would the Coast Guard Operations Systems Center be located in a landlocked State? There is $200,000 to retrofit a college radio station in Athens, OH. Let me be clear here. This is to appropriate funds for homeland security. Obviously high on somebody's list is $200,000 to retrofit a college radio station. My, my, my.

There is $900,000 for the City of Whitefish Emergency Operations Center in Whitefish, MT. The population is 5,849. That comes out to $153.87 per resident which is paid for by my taxpayers and all American taxpayers.

There is $250,000 to retrofit a senior center in Brigham City, UT. The last time I checked, senior centers are important but they have very little relation to homeland security. There is $125,000 to replace a generator in La Grange Park, IL. I have to say, maybe there is something we don't know here. Maybe there is a reason why we need to retrofit a college radio station in Athens, OH; maybe there is a reason we need to replace a generator in La Grange Park, IL; maybe there is a reason why we have to spend $250,000 to retrofit a senior center in Brigham City, UT in the name of homeland security; maybe there is a reason to spend $130,000 to relocate the residents of 130 homes in DeKalb, IL. But we will never know because we don't have any hearings, we don't have any authorization. We just go ahead and spend the money—6.6 percent over last year. The original intent was there were not going to be any earmarks. Amazing.

In addition to the earmarks contained in the conference report, Congress continues to fund programs that the President, as part of his budget submission, had recommended terminating or reducing. This is the President's budget submission. These are the requests of the President that certain programs be terminated because

they are unnecessary and unwanted and redundant. Remember, this is in the face of a $1.43 trillion deficit. We are still funding them, no matter what the President of the United States says and no matter what good sense says.

The first amendment I tried was to terminate a terrestrial-based, long-range maritime radio navigation system called the LORAN–C. The Bush and Clinton administrations sought to terminate the program. They tried. The current administration states in its budget that, although the program is not fully developed, it is already ''obsolete technology.'' This is what the President says:

The Nation no longer needs this system because the federally supported civilian global positioning system, GPS, has replaced it with superior capabilities.

Is there anybody who doubts that GPS is a superior capability?

The elimination of this program, according to the President, would achieve a savings of $36 million in 2010 and $190 million over 5 years.

Those are not my words, those are the words of the administration. So what have the appropriators done? They continued to fund it. When I offered an amendment to eliminate that obsolete technology that the Nation no longer needs, 36—count them—36 of my colleague also supported it. The majority party in the Senate did not support the administration's view that this program should be eliminated and this conference report continues to fund the program into next year, rather than cutting funding immediately—as we should have done a long time ago.

My other attempt to support the President's effort to eliminate wasteful government programs also failed. The administration proposed in its 2010 budget to cut the Over-the-Road Bus Security Program because the money was not awarded based on risk, as recommended by the 9/11 Commission, and the program has been assessed as not effective.

The appropriators have now gone against the recommendations of the 9/11 Commission, they have gone against the recommendations of the President of the United States, and we will continue to spend another $6 million. I offered the amendment to eliminate the program. The amendment was defeated by a vote of 47 to 51, so we will spend another $6 million that the administration says we do not need and that clearly is unnecessary to be funded.

During the Senate consideration of the bill, I filed a total of 28 amendments to strike earmarks and end funding for programs that the President had sought to terminate. Not surprisingly, my efforts were rebuffed each time by the members of the Appropriations Committee. The American people are tired of this process, they are tired of watching their hard-earned money go down the drain. Earlier this year, the President pointedly stated, and I quote him:

We cannot sustain a system that bleeds billions of taxpayers dollars on programs that have outlived their usefulness, or exist solely because of the power of politicians, lobbyists or interest groups. We simply cannot afford it. . . . We will go through our Federal budget—page by page, line by line—eliminating those programs we don't need, and insisting those we do operate in a sensible and cost-effective way.

This is the document. The President went through it line by line. So we offered amendments to eliminate these programs. So of course the appropriators won again. They not only voted against my attempts to strike wasteful and unneeded spending, they also eliminated a provision that was supported by 54 Members of the Senate to mandate the completion of 700 miles of fence along the Southwest border by December 31, 2010. This elimination will only serve to weaken our efforts to secure the border. We know that fencing alone is not a panacea to every security issue on the border, but there is no doubt that increased fencing bolsters Customs border patrol efforts to secure our border.

Additionally, the other body's leadership added language that prohibits use of the funds in this act or any other act for the release of detainees held at Guantanamo into the United States, its territories and possessions. By extending this prohibition to U.S. territories and possessions, the conference report further restricts the release of detainees enacted into law in the supplemental appropriations act for fiscal year 2009. The conference report also restricts transfers of detainees from Guantanamo, limiting them to only transfers for the purpose of prosecution or detention during legal proceedings, and requires the President provide a plan to Congress 45 days prior to transfer. These provisions allow detainees to be tried for acts that amount to war crimes in Federal criminal courts and would authorize bringing detainees into the United States for that purpose.

I will continue to believe that war crimes—and by that I include the intentional attacks by civilians that resulted in the loss of nearly 3,000 lives on September 11, 2001—should be tried in a war crimes tribunal created especially for that purpose. The Military Commission's Act of 2009 is a result of extensive input and coordination with the Obama administration. It should be the vehicle for the trial for the horrendous war crimes committed against thousands of innocent American civilians, rather than bringing detainees from Guantanamo to the United States to face trial in a domestic Federal criminal court.

I am sure that many of my colleagues read with interest the views of former Attorney General of the United States Michael Mukasey in the Wall Street Journal on Monday, October 19, in which he opposes trial of these detainees who are suspected of being responsible for the 9/11 attacks in Federal criminal court. He says:

The Obama administration has said it intends to try several of the prisoners now detained at Guantanamo Bay in civilian courts in this country. This would include Khalid Sheikh Mohammed, the mastermind of the September 11, 2001 terrorist attacks, and other detainees involved.

The Justice Department claims our courts are well suited to the task. This is the former Attorney General of the United States who says:

Based on my experience trying such cases and what I saw as Attorney General, they are not.

That is not to say civilian courts cannot ever handle terrorist prosecutions, but rather their role in a war on terror—to use an unfashionable phrase—should be as the term ''war'' would suggest, a supporting and not a principal role.

I ask unanimous consent the article from the Wall Street Journal by the former Attorney General of the United States saying, ''Civilian Courts Are No Place To Try Terrorists,'' be printed in the RECORD.

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

[From the Wall Street Journal, Oct. 19, 2009]

CIVILIAN COURTS ARE NO PLACE TO TRY TERRORISTS

(By Michael B. Mukasey)

The Obama administration has said it intends to try several of the prisoners now detained at Guantanamo Bay in civilian courts in this country. This would include Khalid Sheikh Mohammed, the mastermind of the Sept. 11, 2001 terrorist attacks, and other detainees allegedly involved. The Justice Department claims that our courts are well suited to the task.

Based on my experience trying such cases, and what I saw as attorney general, they aren't. That is not to say that civilian courts cannot ever handle terrorist prosecutions, but rather that their role in a war on terror—to use an unfashionably harsh phrase—should be, as the term ''war'' would suggest, a supporting and not a principal role.

The challenges of a terrorism trial are overwhelming. To maintain the security of the courthouse and the jail facilities where defendants are housed, deputy U.S. marshals must be recruited from other jurisdictions; jurors must be selected anonymously and escorted to and from the courthouse under armed guard; and judges who preside over such cases often need protection as well. All such measures burden an already overloaded justice system and interfere with the handling of other cases, both criminal and civil.

Moreover, there is every reason to believe that the places of both trial and confinement for such defendants would become attractive targets for others intent on creating mayhem, whether it be terrorists intent on inflicting casualties on the local population, or lawyers intent on filing waves of lawsuits over issues as diverse as whether those captured in combat must be charged with crimes or released, or the conditions of confinement for all prisoners, whether convicted or not.

Even after conviction, the issue is not whether a maximum-security prison can hold these defendants; of course it can. But their presence even inside the walls, as proselytizers if nothing else, is itself a danger. The recent arrest of U.S. citizen Michael Finton, a convert to Islam proselytized in prison and charged with planning to blow up a building in Springfield, Ill., is only the latest example of that problem.

Moreover, the rules for conducting criminal trials in federal courts have been fashioned to prosecute conventional crimes by

conventional criminals. Defendants are granted access to information relating to their case that might be useful in meeting the charges and shaping a defense, without regard to the wider impact such information might have. That can provide a cornucopia of valuable information to terrorists, both those in custody and those at large.

Thus, in the multidefendant terrorism prosecution of Sheik Omar Abdel Rahman and others that I presided over in 1995 in federal district court in Manhattan, the government was required to disclose, as it is routinely in conspiracy cases, the identity of all known co-conspirators, regardless of whether they are charged as defendants. One of those co-conspirators, relatively obscure in 1995, was Osama bin Laden. It was later learned that soon after the government's disclosure the list of unindicted co-conspirators had made its way to bin Laden in Khartoum, Sudan, where he then resided. He was able to learn not only that the government was aware of him, but also who else the government was aware of.

It is not simply the disclosure of information under discovery rules that can be useful to terrorists. The testimony in a public trial, particularly under the probing of appropriately diligent defense counsel, can elicit evidence about means and methods of evidence collection that have nothing to do with the underlying issues in the case, but which can be used to press government witnesses to either disclose information they would prefer to keep confidential or make it appear that they are concealing facts. The alternative is to lengthen criminal trials beyond what is tolerable by vetting topics in closed sessions before they can be presented in open ones.

In June, Attorney General Eric Holder announced the transfer of Ahmed Ghailani to this country from Guantanamo. Mr. Ghailani was indicted in connection with the 1998 bombing of U.S. Embassies in Kenya and Tanzania. He was captured in 2004, after others had already been tried here for that bombing.

Mr. Ghailani was to be tried before a military commission for that and other war crimes committed afterward, but when the Obama administration elected to close Guantanamo, the existing indictment against Mr. Ghailani in New York apparently seemed to offer an attractive alternative. It may be as well that prosecuting Mr. Ghailani in an already pending case in New York was seen as an opportunity to illustrate how readily those at Guantanamo might be prosecuted in civilian courts. After all, as Mr. Holder said in his June announcement, four defendants were ''successfully prosecuted'' in that case.

It is certainly true that four defendants already were tried and sentenced in that case. But the proceedings were far from exemplary. The jury declined to impose the death penalty, which requires unanimity, when one juror disclosed at the end of the trial that he could not impose the death penalty—even though he had sworn previously that he could. Despite his disclosure, the juror was permitted to serve and render a verdict.

Mr. Holder failed to mention it, but there was also a fifth defendant in the case, Mamdouh Mahmud Salim. He never participated in the trial. Why? Because, before it began, in a foiled attempt to escape a maximum security prison, he sharpened a plastic comb into a weapon and drove it through the eye and into the brain of Louis Pepe, a 42–year-old Bureau of Prisons guard. Mr. Pepe was blinded in one eye and rendered nearly unable to speak.

Salim was prosecuted separately for that crime and found guilty of attempted murder. There are many words one might use to describe how these events unfolded; ''successfully'' is not among them.

The very length of Mr. Ghailani's detention prior to being brought here for prosecution presents difficult issues. The Speedy Trial Act requires that those charged be tried within a relatively short time after they are charged or captured, whichever comes last. Even if the pending charge against Mr. Ghailani is not dismissed for violation of that statute, he may well seek access to what the government knows of his activities after the embassy bombings, even if those activities are not charged in the pending indictment. Such disclosures could seriously compromise sources and methods of intelligence gathering.

Finally, the government (for undisclosed reasons) has chosen not to seek the death penalty against Mr. Ghailani, even though that penalty was sought, albeit unsuccessfully, against those who stood trial earlier. The embassy bombings killed more than 200 people.

Although the jury in the earlier case declined to sentence the defendants to death, that determination does not bind a future jury. However, when the government determines not to seek the death penalty against a defendant charged with complicity in the murder of hundreds, that potentially distorts every future capital case the government prosecutes. Put simply, once the government decides not to seek the death penalty against a defendant charged with mass murder, how can it justify seeking the death penalty against anyone charged with murder—however atrocious—on a smaller scale?

Even a successful prosecution of Mr. Ghailani, with none of the possible obstacles described earlier, would offer no example of how the cases against other Guantanamo detainees can be handled. The embassy bombing case was investigated for prosecution in a court, with all of the safeguards in handling evidence and securing witnesses that attend such a prosecution. By contrast, the charges against other detainees have not been so investigated.

It was anticipated that if those detainees were to be tried at all, it would be before a military commission where the touchstone for admissibility of evidence was simply relevance and apparent reliability. Thus, the circumstances of their capture on the battlefield could be described by affidavit if necessary, without bringing to court the particular soldier or unit that effected the capture, so long as the affidavit and surrounding circumstances appeared reliable. No such procedure would be permitted in an ordinary civilian court.

Moreover, it appears likely that certain charges could not be presented in a civilian court because the proof that would have to be offered could, if publicly disclosed, compromise sources and methods of intelligence gathering. The military commissions regimen established for use at Guantanamo was designed with such considerations in mind. It provided a way of handling classified information so as to make it available to a defendant's counsel while preserving confidentiality. The courtroom facility at Guantanamo was constructed, at a cost of millions of dollars, specifically to accommodate the handling of classified information and the heightened security needs of a trial of such defendants.

Nevertheless, critics of Guantanamo seem to believe that if we put our vaunted civilian justice system on display in these cases, then we will reap benefits in the coin of world opinion, and perhaps even in that part of the world that wishes us ill. Of course, we did just that after the first World Trade Center bombing, after the plot to blow up airliners over the Pacific, and after the embassy bombings in Kenya and Tanzania.

In return, we got the 9/11 attacks and the murder of nearly 3,000 innocents. True, this won us a great deal of goodwill abroad—people around the globe lined up for blocks outside our embassies to sign the condolence books. That is the kind of goodwill we can do without.

Mr. MCCAIN. Finally, I hope we will have the opportunity to come back to this debate during the floor consideration of the Commerce-Justice-State appropriations bill in the context of the Graham amendment on this issue, which I am proud to cosponsor along with Senator LIEBERMAN.

I am concerned, however, because I understand the administration will soon announce its decision on prosecuting the 9/11 detainees, and indications are the administration will seek such prosecutions in Federal criminal courts. Congress should have the opportunity to speak on this issue before the administration embarks on a course with which I and many law and national security experts strongly disagree.

I am also pleased this conference report does contain a provision that will allow the Secretary of Defense to prohibit the disclosure of detainee photographs under the Freedom of Information Act if he certifies that release of the photos would endanger U.S. citizens, members of the Armed Forces, or U.S. Government employees deployed outside the United States.

I do not have to, nor should I have to, remind my colleagues about the seriousness of the fiscal crisis our Nation is facing. There is no better way to prove we are serious about getting our country back on the right path than by ending the wasteful practice of earmarking funds in appropriations bills, especially a bill as important as this one that provides for funding of our critical homeland security programs.

Our current economic situation and our vital national security concerns require that now more than ever we prioritize our Federal spending. But this conference report does not do that. We cannot continue to spend taxpayer dollars in such an irresponsible manner. So, obviously, I am unable to support this legislation. I encourage my colleagues to vote against it, and if it is passed, I urge the President of the United States to send a message that this is going to stop and veto this bill and every other bill that is larded down with earmarked porkbarrel projects. It is time for a change, a real change.

Finally, there are some angry people out there. They call them tea parties. They come to the townhall meetings in huge numbers. They write. They call. They e-mail. They Twitter. They tell us they are sick and tired of this. I urge my colleagues to vote no.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, the junior Senator from South Carolina earlier raised concerns about dropping his amendment concerning the fence on the southwest border. He asserted that the decision to drop the language was

made behind closed doors. To be clear, the conference met in public session on October 7 during the full light of day.

As to the DeMint amendment, I fully support the goal of the amendment that was offered by the Senator from South Carolina. I am one of the strongest proponents in the Senate of securing our southwest border. That is why I supported legislation in 2006 to build the fence. I have led the effort to increase border security and immigration enforcement efforts.

However, the amendment that was offered by the able Senator from South Carolina is too prescriptive and too costly. Instead, in conference I worked to provide real resources to secure our borders. The conference agreement before the Senate today sustains the bipartisan congressional effort begun by the Byrd amendment to the fiscal year 2005 supplemental and continued in the fiscal year 2006–2009 appropriations acts to provide substantial increases in border security and immigration enforcement.

The number of Border Patrol agents has increased from 11,264 to a level of 20,019 agents, by the end of this year. Under this agreement, the conferees added over $21 million above the request to hire an additional 144 agents. There will be 20,163 agents onboard at the end of fiscal year 2010.

Similarly, the number of detention beds has increased in the same time period from 18,500 beds to 33,400 beds. The agreement fully funds 33,400 detention beds and includes statutory language to maintain that level of bed space throughout the fiscal year.

The agreement also adds $25 million to the President's request of $112 million to expand the capacity of the E-Verify Program and increases its compliance rate.

The miles of fencing that have been constructed have increased from 119 miles in 2006 to more than 629 miles. The number of miles of the southwest border that are under ''effective control,'' as determined by the Border Patrol, has grown from 241 miles to almost 700 miles this year. That is an increase of almost 80 miles since the end of the last fiscal year.

More than 655 miles of border fence will be complete in early 2010. The agreement provides $800 million or $25 million above 2009 for the deployment of additional sensors, cameras, and other technology on the southwest border. Since beginning major border fence and security construction along the southwest border in fiscal year 2007, when combined with the $800 million in this bill and the $100 million provided in the Recovery Act, nearly $4.1 billion—spelled with a ''b''—nearly $4.1 billion has been appropriated for this purpose. That $4.1 billion is a lot of money, a lot of money. That is $4.10 for every minute since Jesus Christ was born the way I figure it.

However, it is estimated it could cost $8.5 billion to construct the additional fencing required by the Senator's amendment. That is money we do not have. The conference report strongly supports all aspects, all aspects of border security and immigration enforcement, and I urge my colleagues to support it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, how much time is remaining on the Democratic side?

The PRESIDING OFFICER. There is 3 minutes remaining.

Mr. DURBIN. I ask unanimous consent to have 5 additional minutes, for a total of 8 minutes allocated for us.

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

Mr. DURBIN. I rise today to speak in support of a provision in this bill and thank the chairman of this committee, Senator ROBERT C. BYRD of West Virginia, for his fine work not only on this bill but for his amazing contribution to America and to this institution of the Senate.

I rise today to speak in support of a provision in the bill which allows detainees held at Guantanamo to be transferred to the United States to be prosecuted and held responsible for their crime. The President has been clear. It is a priority of this administration to bring to justice those responsible for 9/11 and other terrorists who have attacked our country.

The conference report which we are considering would allow those people responsible for acts of terrorism to be brought here to be tried for their crimes. Unfortunately, some people on the other side of the aisle have spoken today and have a different view.

Earlier today, my colleagues, Senators CHAMBLISS and SESSIONS, argued that we should not transfer suspected terrorists from Guantanamo to the United States to be prosecuted for their crimes.

Senator CHAMBLISS said, ''Prosecuting these individuals in our United States courts simply will not work.''

Senator SESSIONS said, ''There is no practical alternative'' to prosecuting detainees in military commissions at Guantanamo Bay.

Those statements are very clear but they are also wrong. Look at the record. For 7 long years the Bush administration failed to convict any of the terrorists planning the 9/11 attacks. And for 7 long years only three individuals were convicted by military commissions at Guantanamo. In contrast, look at the record of our criminal justice system when it came to trying terrorists accountable for their crimes. Richard Sabel and James Benjamin, two former Federal prosecutors with extensive experience, published a detailed study of the prosecutions of terrorists in the courts of the United States of America. Here is what they found: From 9/11 until June 2009, 195 terrorists were convicted and sentenced for their crimes in our courts.

When the Senator on the other side says, ''Prosecuting these individuals in our United States courts simply will not work,'' he ignores 195 successful prosecutions.

According to the Justice Department, since January 1, 2009, more than 30 terrorists have been successfully prosecuted or sentenced in Federal courts. It continues to this day.

When you compare the record at Guantanamo, where Senators from the other side of the aisle say all these cases should be tried, it is clear the only way to deal with this is through our court system—not exclusively, but it should be an option that is available to the Department of Justice.

Recently, the administration transferred Ahmed Ghailani to the United States to be prosecuted for his involvement in the 1998 bombings of our Embassies in Kenya and Tanzania, killing 224 people, including 12 Americans.

My colleagues on the other side of the aisle have been critical of the administration's decision to bring this man to justice in America's courts. For example, ERIC CANTOR, who is a Member of the House on the Republican side, said:

> We have no judicial precedents for the conviction of someone like this.

The truth is, there are many precedents for the conviction of terrorists in U.S. courts: Ramzi Yousef, the mastermind of the 1993 World Trade Center bombing; Omar Abdel Rahman, the so-called Blind Sheikh; Richard Reid, the ''Shoe Bomber;'' Zacarias Moussaoui; Ted Kaczynski, the Unabomber; and Terry Nichols, the Oklahoma City coconspirator.

In fact, there is a precedent for convicting terrorists who were involved in the bombing of the United States Embassies in Tanzania and Kenya, the same attack Ahmed Ghailani was indicted for. In 2001, four men were sentenced to life without parole at the Federal courthouse in lower Manhattan, the same court in which Mr. Ghailani will be tried.

I will tell you point blank: If they on the other side of the aisle are trying to create some fear that we cannot bring a terrorist to the United States of America, hold them successfully, try them in our courts, convict them and incarcerate them, history says otherwise.

Over 350 convicted terrorists have been tried in our courts and are being held in our prisons today successfully—held every single day. Is America less safe because of it? No. We are safer because would-be terrorists are off the streets, convicted in our courts, serving time in prison—exactly where they belong.

To argue we should eliminate this administration's right to try a terrorist in a U.S. court is to deny to our government a tool they need to fight terrorism. We also know that not a single person has ever escaped from maximum security in the Federal prisons of America. Somehow, to create the notion that the people tried in our courts are somehow going to be released in

America—President Obama has made it clear, that will never happen. He is not endorsing that, never has. And to suggest that is to suggest something that has never been endorsed by the administration. Furthermore, we know they can be held successfully in our courts.

This bill does the right thing. It gives the President the option, when the Department of Justice believes it is the most likely place to try, successfully, those accused of terrorism—to bring them into our court system, to detain them in the United States for that purpose.

There is nothing in this bill which would give the President—or anyone, if he wanted it—the authority to release a Guantanamo detainee in America. This is something that has been created, unfortunately, by a lot of talk show hosts who do not read the bill and do not understand the law and certainly do not understand what Guantanamo does to us today.

What does it cost for us to hold a terrorist at Guantanamo today? Mr. President, $435,000 a year. That is what it costs—dramatically more than the cost of incarcerating in America's prisons.

I want to make it clear that I endorse the position not only of the administration but also of GEN Colin Powell; Republican Senators JOHN MCCAIN and LINDSEY GRAHAM; former Republican Secretaries of State James Baker, Henry Kissinger, and Condoleezza Rice; Defense Secretary Robert Gates; ADM Mike Mullen, the Chairman of the Joint Chiefs of Staff; and GEN David Petraeus, who have all said that closing Guantanamo will make America a safer place.

There are some on the other side of the aisle who have not accepted that. I do not believe they understand the threat which the continuation of Guantanamo as an imprisonment facility challenges us to acknowledge in this day and age when we face global terrorism.

Guantanamo must be closed because it has become a recruiting tool for al-Qaida and other terrorists. That is not just my opinion; it is the opinion of significant leaders of this country, such as former GEN Colin Powell.

I think we should endorse the language in this conference report. We should move forward with the adoption of this conference report, give the President another tool to fight terrorism.

I yield the floor.

The PRESIDING OFFICER (Mr. KAUFMAN). The Senator from West Virginia.

Mr. BYRD. Mr. President, as we complete the debate today on the fiscal year 2010 Homeland Security Appropriations bill, I again thank the very able Senator from Ohio, GEORGE VOINOVICH, the ranking member, for his many contributions to this bipartisan legislation.

I thank all Senators. This conference report provides the Department of Homeland Security with the resources it needs to succeed in its critical missions. I urge support for the conference report.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VOINOVICH. Mr. President, I thank the chairman of our subcommittee, Senator BYRD, for the outstanding job he has done in finally putting together this conference report so it can be considered by the Senate.

I also acknowledge the tremendous help we have gotten from our staff on this piece of legislation. I am sorry that Carol Cribbs cannot be here today. Carol worked very hard on this legislation. She is at home after taking a big fall and cutting her face, and I want to mention her name and let her know we miss her and we appreciate the good job she has done for us. Rebecca Davies has worked very hard on this legislation, and I appreciate it. She was bringing in a neophyte. This is my first opportunity to be on the Appropriations Committee.

There have been several issues raised here by some of my colleagues on our side of the aisle that are things that should be taken into consideration. The Senator from Arizona continues to make the case in terms of earmarks, and I am sure he will continue to do that, and we do respect what he has to say about that issue. But I believe the way this legislation is put together carefully justifies people on my side of the aisle supporting this legislation, in spite of some of the things the Senator from Arizona talked about.

In addition to the provisions that deal with Guantanamo Bay, I wish to point out that the language in this conference report is the same language that appeared in the June Defense supplemental that was passed in 2009, which continues to be the law under the continuing resolution. Fundamentally, what we do is put that same language here in this conference report.

If somebody reads the conference report, on page 38, they can see, in spite of the fine words of the Senator from Illinois, there is a large barrier the President has to go over before he could let anyone here into this country. And if he does let them here, as Senator DURBIN has said, they would be here for prosecution. But there are seven hurdles that have to be met by the President. Once he does that, then 45 days thereafter he could bring someone in for prosecution. So I think anyone who is concerned about bringing a bunch of the Gitmo people here in the United States for any other reason but prosecution should be comforted by the fact of this language. Also, I point out, there is language in the Senate Defense appropriations bill that also deals with this subject.

So for all intents and purposes, I think we have done a fairly good job. Frankly, I wish we had adopted this conference report a month and a half ago. But we did not. I urge my colleagues to support the conference report.

The PRESIDING OFFICER. The majority whip is recognized.

Mr. DURBIN. Mr. President, unless someone is seeking recognition—and I do not believe they are—I ask unanimous consent that all time be yielded back, and the Senate vote on adoption of the conference report, with no points of order in order.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The question is on the adoption of the conference report.

Mr. DURBIN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from North Carolina (Mrs. HAGAN) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 79, nays 19, as follows:

[Rollcall Vote No. 323 Leg.]

YEAS—79

Akaka	Gillibrand	Murray
Alexander	Graham	Nelson (NE)
Baucus	Grassley	Nelson (FL)
Begich	Gregg	Pryor
Bennet	Harkin	Reed
Bennett	Hatch	Reid
Bingaman	Inouye	Roberts
Bond	Johanns	Rockefeller
Boxer	Johnson	Sanders
Brown	Kaufman	Schumer
Brownback	Kirk	Shaheen
Burris	Klobuchar	Shelby
Byrd	Kohl	Snowe
Cantwell	Landrieu	Specter
Cardin	Lautenberg	Stabenow
Carper	Leahy	Tester
Casey	LeMieux	Thune
Cochran	Levin	Udall (CO)
Collins	Lieberman	Udall (NM)
Conrad	Lincoln	Vitter
Cornyn	Lugar	Voinovich
Dodd	McCaskill	Warner
Dorgan	McConnell	Webb
Durbin	Menendez	Whitehouse
Feingold	Merkley	Wyden
Feinstein	Mikulski	
Franken	Murkowski	

NAYS—19

Barrasso	Crapo	Kyl
Bayh	DeMint	McCain
Bunning	Ensign	Risch
Burr	Enzi	Sessions
Chambliss	Hutchison	Wicker
Coburn	Inhofe	
Corker	Isakson	

NOT VOTING—2

Hagan	Kerry

The conference report was agreed to.

Mr. COCHRAN. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. GRASSLEY. Mr. President, while I voted in support of the fiscal year 2010 Homeland Security appropriations bill, I do want to take this opportunity to express my frustrations with the

fact that many good provisions were taken out of the final bill by the House-Senate conference committee. The provisions I want to talk about were intended to improve our ability to enforce immigration law in the interior and to secure the border to protect the homeland.

First, I want to talk about the amendment I pushed for during Senate consideration of the appropriations bill. It would have given businesses the tools to ensure that they have a legal workforce. My amendment would have allowed employers to voluntarily check their existing workforce and make sure their workers are legally in this country to work. It said that if an employer chooses to verify the status of all their workers—not just new hires—then they should be allowed to do so. And, it had protections in place. If an employer were to elect to check all workers, they would have to notify the Secretary of Homeland Security that they plan to verify their existing workforce. The employer would then have 10 days to check all workers. This short time period would prevent employers from targeting certain workers by claiming that they are ''still working on'' verifying the remainder of their workforce. And, my amendment would have required the employer to check all individuals if they plan to check their existing workforce. If they check one, they check them all.

Employers want to abide by the law and hire people that are legally in this country. Right now, E-Verify only allows them to check prospective employees. But, we should be allowing employers to access this free, online database system to check all their workers.

Second, while I am grateful that the committee recognizes the need to keep E-Verify operational and that the bill includes a three year reauthorization of the program, I am disappointed that the conference committee stripped an amendment to permanently reauthorize E-Verify. The amendment authored by Senator SESSIONS was passed with bipartisan support. The administration and the majority leadership claim they fully back the E-Verify program, but their actions don't show it. Our businesses need to know that this program will be around for the long-term, and that they can rely on the Federal Government to make sure that the workers they hire are legally in this country.

The third amendment stripped by the conference committee would have increased our ability to secure the border by putting funds into fencing to reduce illegal pedestrian border crossings. The DeMint provision would have required 700 miles of reinforced pedestrian fencing to be built along the southern border by December 31, 2010.

Finally, an amendment to allow the Department of Homeland Security to go forward with the ''no match'' rule was stripped. This amendment by Senator VITTER would have blocked the Obama administration from gutting the ''no-match'' rule put in place in 2008 to notify employers when their employees are using a Social Security number that does not match their name. These ''no match'' letters help employers who want to follow the law and make sure they are employing legally authorized individuals.

I voted for this bill on the Senate floor because homeland security is not something we should play politics with. Defending our country is our No. 1 constitutional priority. Taxpayers expect us to get these bills passed and we have that responsibility. I voted for this bill today because it includes funding for essential border security and interior security efforts. However, there are a number of problems with this bill despite my vote for it. I am concerned that the House and Senate conference committee did a disservice to the American people by taking out language preventing illegal aliens from gaining work in this country. The conference committee, had they kept the provisions I talked about, would have helped many Americans who are looking for work and struggling to make ends meet. The provisions would have also held employers accountable for their hiring practices. It's my hope that this body will work harder to beef up our immigration enforcement efforts, and ensure that Americans are given a priority over illegal aliens during this time of high unemployment.

MORNING BUSINESS

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Senate proceed to a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each.

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

Mr. BAUCUS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

NAKED SHORT SELLING

Mr. KAUFMAN. Mr. President, I rise to applaud the SEC's Enforcement Division for recently bringing two actions for insider trading against Wall Street actors. While our judicial system must run its course, I am nonetheless pleased that the investigators and prosecutors are working together to target Wall Street wrongdoing.

In white-collar crime, securities fraud, and insider trading, enforcement is critical to deterrence. In turn, deterrence is critical to maintaining the integrity of our capital markets.

The importance of these cases extends beyond deterring and punishing criminal conduct. By identifying, prosecuting, and punishing alleged criminals on Wall Street, we are restoring the public's faith in our financial markets and the rule of law.

So while the Enforcement Division is sending a strong signal about insider trading, it still has not brought any enforcement actions against naked short sellers. This is despite the fact that naked short selling is widely acknowledged by many on Wall Street to have helped manipulate downward the prices of Lehman Brothers and Bear Stearns in their final days. Their resulting failure served as a catalyst for the ensuing financial crisis that affected millions of Americans.

I am pleased the SEC has flashed a red light in front of insider trading. But until it brings a case or makes the naked short selling that took place last year an investigative priority, the Commission is leaving a green light in front of naked short sellers. When you have a red light on one road and a green light on another road, everyone knows where the cars are going to go.

This concern is not mine alone. In the words of the Dow Jones Market Watch, in a recent article entitled ''SEC Loses Taste for Short Selling Fight:''

> More than a year after short sellers allegedly sucked the broader market lower by concentrating negative bets in troubled financial firms, the Nation's securities regulators appear to be backing off curbing the practice.

In a piece on the naked short-selling debate, Forbes magazine noted:

> We have become a nation that ponders everything without resolution.

This is critical because the SEC's current rule against naked short selling—a reasonable belief standard that the underlying stock would be available if it is needed—is widely viewed as unenforceable. The market has recently been showing promise in moving upward, but if it goes south—and I am sorry to say eventually it will again—the bear raiders who destroyed our economy a year ago and made millions in the process will strike again.

If you know you can sell 5,000 umbrellas on a rainy day in New York, you are going to be out on the street with 5,000 umbrellas the next time it rains. The next time one of our TARP banks or other financial institutions look vulnerable, naked short sellers will seize the opportunity to profit again, and this time it could cost the taxpayers directly. The SEC will have no ability to stop them or punish them after the fact.

Given what is at stake, why have we not had action? Frankly, it is a story emblematic of problems on Wall Street. The story starts in July 2007, when the SEC decided to remove the uptick rule which forces short sellers to wait until a stock ticks up at least once before being allowed to sell without putting anything effective in its place.