secure our borders and would have a guest worker program going forward and then follow up by dealing with the illegals who are in our country now. Perhaps there would even be a safe harbor—no commitments about what would happen but not to cause people to lose jobs that are not being filled.

Perhaps, there could be something along that line as we decide how to deal with those people who are here. I do believe there will be more acceptance of a responsible, legalization process of people who are here illegally if the American people see border security and a guest worker program that puts the people in the front of the line who have come legally into our country to work.

Mr. President, it is so important that we not give up. It is so important that we not turn another blind eye to the problem facing this country of more and more illegal aliens coming in. We must secure our borders from terrorists, drug dealers, and human traffickers. But it is not the same as people who are coming to our country for economic help for themselves and their families. We must provide a way to attract those people to jobs that are not being filled by Americans. So, yes, it is disappointing today.

I applaud the people who have worked so hard. I want to say that they did make progress, and it is something from which we can all learn and do better as we move forward. But, mostly, we cannot shirk the responsibility of our United States Senate and our United States Congress, working with the President, to do the right thing for our country.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts is recognized.

IMMIGRATION

Mr. KENNEDY. Mr. President, it is now clear that we are not going to complete our work on immigration reform. That is enormously disappointing for Congress and for the country. But we will be back and we will prevail. The American people sent us here to act on our most urgent problems, and they will not accept inaction.

I have seen this happen time and time again. America always finds a way to solve its problems, expand its frontiers, and move closer to its ideals. It is not always easy, but it is the American way.

I learned this first as a child at my grandfather's knee. He taught me that in America progress is always possible. His generation moved past the cruel signs in the windows in Boston saying ''Irish Need Not Apply'' and elected that son of an Irish immigrant as mayor of Boston.

I learned that lesson firsthand when I came to the Senate in 1962. Our Nation was finally recognizing that the work of civil rights had not ended with the Emancipation Proclamation, nor with the Supreme Court's decision in Brown v. Board of Education. It was up to Congress to take action.

The path forward has never been an easy one. There were filibusters of the Civil Rights Act of 1964 and of the Voting Rights Act of 1965. But we didn't give up and we ultimately prevailed.

The same was true in our battles for fair housing and for an end to discrimination against persons with disabilities. On immense issues such as these, a minority in the Senate was often able to create stalemate and delay for a time. But they had never been able to stop the march of progress.

Throughout all of those battles, we faced critics who loudly warned that we were changing America forever. In the end, they were right. Our history of civil rights legislation did change America forever. It made America stronger, fairer, and a better nation.

Immigration is another issue like that. We know the high price of continuing inaction. Raids and other enforcement actions will escalate, terrorizing our communities and businesses.

The 12 million undocumented immigrants will soon be millions more. Sweatshops will grow and undermine American workers and wages. State and local governments will take matters into their own hands and pass a maze of conflicting laws that hurt our country. We will have the kind of open border that is unacceptable in our post-9/11 world.

Immigration reform is an opportunity to be true to our ideals as a nation. Our Declaration of Independence announces that all of us are created equal. Today, we failed to live up to that declaration for millions of men and women who live, work, and worship beside us. But our ideals are too strong to be held back for long.

Martin Luther King had a dream that children would be judged solely by ''the content of their character.'' Today, we failed to make that dream come true for the children of immigrants. But that dream will never die. It has the power to overcome the most bitter opposition.

I believe we will soon succeed where we failed today, and that we will enact the kind of comprehensive reform that our ideals and national security demand. Soon, word will echo across the country about the consequences of today's vote. The American people will know that a minority of the Senate blocked a record investment in border security.

H.L. Mencken said that for every complex problem, there is a simple solution—and it is wrong. A minority in the Senate has employed a simple label against this bill—amnesty—and they were wrong, too.

A minority in the Senate rejected a stronger economy that is fairer to our taxpayers and our workers. A minority of the Senate rejected America's own extraordinary immigrant history and ignored our Nation's most urgent needs.

But we are in this struggle for the long haul. Today's defeat will not stand. As we continue the battle, we will have ample inspiration in the lives of the immigrants all around us.

From Jamestown, to the Pilgrims, to the Irish, to today's workers, people have come to this country in search of opportunity. They have sought nothing more than a chance to work hard and bring a better life to themselves and their families. They come to our country with their hearts and minds full of hope.

We will endure today's loss and begin anew to build the kinds of tough, fair, and practical reform worthy of our shared history as immigrants and as Americans.

Immigration reforms are always controversial. But Congress was created to muster political will to answer such challenges. Today we didn't, but tomorrow we will.

I yield the floor.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mrs. MCCASKILL). Without objection, it is so ordered.

Mr. CORNYN. Madam President, I ask unanimous consent to speak for up to 10 minutes.

The PRESIDING OFFICER. The Senator has that right.

Mr. CORNYN. Madam President, I wanted to come to the floor to offer a few thoughts and observations on the important vote we had earlier today on the immigration bill. I know many people are puzzled when they watch us debate big and important issues such as this. What usually happens is our views are reduced to a bumper sticker. Particularly on complex topics such as immigration, a bumper sticker doesn't tell the whole story. So I wish to offer a few thoughts on the way forward on this important issue.

I have not found an issue in my short time in the Senate, now about 4½ years, which has been more closely followed and on which there has been more passion than the subject we have been debating this week and which we voted on this morning.

Sometimes, as we all know, passion can produce more heat than light, but what we need is some light and some clear thinking and some better solutions to our broken borders and our broken immigration system than we have had so far.

I don't say that with the intent to criticize the hard work that people have put into this effort. I am proud of the fact that since I have been in the Senate, I have tried to constructively contribute to a solution to this problem. As a member of the Senate Judiciary Committee and as a former chairman of the Immigration and Border Security Subcommittee of that Judiciary Committee, now as the ranking member, I have tried my best to contribute

to a solution. But I think the one message I would take away from what we saw happen earlier today is the American people, my constituents in Texas, are profoundly skeptical of big Government solutions with a lot of moving parts based on big, grandiose promises, when our history has been one of not delivering consistent with what we promised. Let me mention what I mean by that.

In 1986, we had a big immigration bill, supposedly one to fix all the problems. President Ronald Reagan signed that bill. I remember Ed Meese, his Attorney General, wrote a piece in I believe the New York Times explaining what was going through President Reagan's mind as he signed that amnesty for 3 million people. Ed Meese explained that President Reagan was told in 1986 that if you do this amnesty one time, that will be the end of it; you will never have to do another one, as long as we have enforcement of our laws that go hand in hand with that grant of amnesty for 3 million people.

Part of the skepticism that I think the American people and certainly my constituents in Texas have had about this bill is that they saw coupled with a path to legalization and ultimately American citizenship for roughly 12 million people that we mean it this time, we are going to get serious about border security, we are going to get serious about eliminating the document fraud and identity theft that makes our current worker verification system virtually unworkable, and they saw a repetition of 1986.

There were components of this bill that I thought were actually pretty good, that represented an improvement over the status quo. But I think some of the debate got a little bit hard to believe such as when people said the only way you are going to get border security is if you agree to a path to citizenship for 12 million people. The American people are pretty smart. They can see through that, and they know there is no obvious linkage between border security and a path to citizenship for 12 million people. They know if we were serious about border security, we would have already done it.

So I think, at least the lesson I have learned from this vote this morning is not that we can give up because the problem is not going to go away. It may get caught up in Presidential election politics and maybe part of what we need to do is continue this grand national conversation about how do we solve this problem because I don't believe there is any problem that is too big for the American people to solve. Certainly, they are not waiting for some pronouncement from Mount Olympus in Washington, DC, about here is the answer and you have to swallow it. We work for the American people. We work for the constituents who sent us here. The power we get to act on their behalf comes from the bottom up; it doesn't come from the top down. I think part of the rejection that we saw of this particular bill was the sense that Washington was trying to dictate a solution about which the American people had a lot of questions and a lot of reservations.

I think we need to go back to basics. We need to go back and listen to our constituents. We need to talk to them and explain to them what the problem is. We need to have a transparent process that is an interactive process where we can listen to them and we can tell them what we have learned about this issue and about some of the problems and try to come up with a solution.

One of the lessons may be that big, multifaceted, complex programs such as this bill offered, particularly on something where the Federal Government doesn't have a whole lot of credibility when it comes to actually enforcing the law or securing the border, the American people are not going to accept it, and I think that was reflected in the vote we had today.

That is not the same thing as saying give up, because we can't give up. This problem is not going away. As somebody who represents a border State with about 1,600 miles of common border with Mexico, I say we have to find a rational solution to this problem.

I know that passions have run high, but I, for one, am very pleased with the level of the debate in the Senate because, as we all know, sometimes this topic is susceptible to some pretty irresponsible language and dialog.

This was not a rejection of our heritage as a nation of immigrants. We are a nation of immigrants, but we are also a nation of laws. And I think what the American people saw—certainly my constituents in Texas saw—is the status quo of a kind of lawlessness and a lack of commitment to simple law and order which they wanted to see restored. I think if we demonstrate that we have heard the message they have sent us—if we demonstrate that, yes, we are serious about border security; yes, we are serious about enforcing the law—then I think we can continue that conversation and talk about the other aspects of this legislation that we need to continue to work on.

What are the legitimate needs of American employers for legal workers? Certainly, we would prefer that they get legal workers rather than workers who are not respecting our laws. Certainly, we would all want, I would think, to have a system whereby someone can show up at a workplace and present a tamper-proof, secure identification card and virtually guarantee that they are legally eligible to work in the United States as opposed to the kind of document fraud and identity theft that now runs rampant and which makes it impossible even for good employers trying to honor the law to know that the person standing before them can actually legally work in the United States.

We recently had an example of a company, a Swift meatpacking plant, which was the subject of a raid by the Immigration and Customs Enforcement Service in multiple States, including my State of Texas. What they found was this company was using the only Government program—the only Government program—known as Basic Pilot, to try to match up the identity of people who came to work there with a Social Security number. Basic Pilot confirmed that, yes, that is JOHN CORNYN, and that is JOHN CORNYN's Social Security number, but that is about all Basic Pilot could tell them. What they wouldn't tell them is if it was somebody else masquerading as JOHN CORNYN and claiming his Social Security number.

That company sustained a huge business loss because the Federal Government failed it by not providing it with a reliable means to determine whether people who claim to be American citizens and eligible to work were, in fact, eligible. So we have a lot of credibility we need to restore at the Federal Government level when it comes to enforcing the law and securing our borders.

I think if we perhaps break down this big problem into smaller solutions, step by step, and work our way through this, we can continue to find an opportunity to solve this problem bit by bit and piece by piece. What I saw rejected this morning were big, grandiose government solutions where our credibility was seriously lacking because of a lack of followthrough on earlier promises, particularly when it comes to enforcing our laws and securing our borders.

I would just like to say to all my colleagues who have worked so hard on this issue that you have my commitment that I will continue to work with you in good faith to try to solve the problems. That is what I thought my constituents wanted me to do. That is what I know they want me to do. They do not want us pointing the finger of blame. They do not want us calling each other names. And they do not want the sort of ''hyperpartisanship'' that unfortunately too often characterizes our activities in Washington. But they also don't want to be sold a bill of goods. They do not want to be promised a lot when they know we are going to deliver little.

So this is a big issue, one that is worthy of the greatest deliberative body in the world—the U.S. Senate—and it is an issue on which I assure each of my colleagues that I intend to do my part to try to solve.

Madam President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HATCH. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. NELSON of Nebraska). Without objection, it is so ordered.

NOMINATION OF LESLIE SOUTHWICK

Mr. HATCH. Mr. President, as the discussion over immigration reform demonstrates, this body confronts tough issues and can find itself embroiled in some contentious debates.

Over the years, it has not been uncommon to see judicial appointment debates at the top of the list of contentious debates. And during those debates, we have seen a lot of tactics and methods used.

But some tactics are simply wrong.

Some methods are simply inappropriate.

There are some means which no ends can justify. Some of these wrong tactics, inappropriate methods, and illegitimate means have been used to attack the nomination of Leslie Southwick to the U.S. Court of Appeals for the Fifth Circuit.

If we care about the integrity of this body and the good of the judicial branch, if we really believe that there is something more important than raw ideological politics, we should reject this attack on this good man and confirm his nomination.

Judge Southwick, who served for a dozen years on the Mississippi Court of Appeals, has received a unanimous well qualified rating from the American Bar Association.

He has the strong support of his home State Senators, both of whom are Senior Members.

He would fill a judicial emergency vacancy.

And though it has been obscured by all the hyperbolic, vitriolic, and over-the-top rhetoric now thrown about, the Judiciary Committee just months ago approved without objection Judge Southwick's nomination. Now, for whatever reason, the nomination is in limbo—first it is on the committee agenda without action and now not on the committee agenda at all.

The committee looked at the same qualifications, the same record, the same man with the same character, and found no objection whatsoever.

The only difference—which is really a distinction without a difference—is that Judge Southwick was then nominated to the U.S. District Court but now has been nominated to the U.S. Court of Appeals.

The disturbing tactics being used against this nominee are certainly not new, and they are no more legitimate or persuasive now than when they have been used against other nominees in the past.

Frankly, I am amazed that anyone finds them credible, let alone persuasive.

Judge Southwick served on the Mississippi Court of Appeals for 12 years.

It is not credible to focus only on a few cases among the 7,000 in which he participated and the nearly 1,000 opinions he wrote.

It is not credible to focus only on the results of those few cases, ignoring the facts and the law.

It is not credible to demand that judges render decisions that serve certain political interests, whether or not the law actually requires that result.

It is not credible to attack Judge Southwick for phrases or language in opinions he did not write.

It is not credible to ignore the limitations imposed on appeals court judges by the standard of review they must follow.

It is not credible to say that a judicial ruling against a particular party amounts to a judge's personal hostility against a group to which that party might belong.

These are some of the misleading tactics that we have seen used against judicial nominees in the past and are being used against Judge Southwick now.

These tactics are simply not credible, and I am amazed that my Democratic colleagues seem to be going along with them.

One of the sure signs that such illegitimate tactics are in play is that they result in a distorted, twisted caricature of a nominee that those who have long known and worked with him simply do not recognize.

Richard Roberts, former president of the Mississippi bar, for example, says that no other lawyer in the State is as qualified as Judge Southwick to serve on the Fifth Circuit.

According to Phillip McIntosh, associate dean at the Mississippi College School of Law where Judge Southwick now teaches, a politically and racially diverse faculty unanimously approved Judge Southwick for a faculty position with no question about his integrity, fairness, or impartiality.

A. La'Verne Edney, an African-American partner at Judge Southwick's former law firm, clerked for him on the Mississippi Court of Appeals.

He says that Judge Southwick applied the law fairly without regard to the parties' affiliation, color, or stature.

These and other colleagues and partners of Judge Southwick know him best.

I can only imagine their shock and confusion over the wildly derogatory and extreme descriptions offered by Judge Southwick's Washington-based critics.

I can only imagine the reaction by those who know Judge Southwick when those who do not know him make such claims without knowing what they are talking about.

I think my colleagues would agree that the American Bar Association has never been accused of a conservative bias.

And I think we would all agree that the ABA conducts perhaps the most exhaustive and thorough evaluation of judicial nominees.

The ABA looks at the whole record; the ABA interviews dozens of people in each case.

Let me remind everyone that the previous nominee to this very same Fifth Circuit position ran into trouble when the ABA rated him not qualified.

My Democratic colleagues thought that was the most insightful, thorough, accurate, and definitive evaluation ever done on any nominee to any position anywhere.

The same ABA has unanimously given Judge Southwick its highest well qualified rating.

That means, according to the ABA's own description of its rating criteria, that Judge Southwick gets the highest marks for such things as compassion, open-mindedness, freedom from bias and commitment to equal justice.

So here is the choice we face.

On the one side, critics who do not know and have not worked with Judge Southwick look only at the results of just a few cases and claim Judge Southwick has hostile views on issues such as race, when there is no indication by anybody in Mississippi or otherwise that he has any such hostility.

On the other side, the ABA and those who do know and have worked with Judge Southwick look at his entire record and gave him the highest marks for compassion, open-mindedness, freedom from bias and commitment to equal justice under the law.

These two radically different pictures of this nominee cannot both be true.

I think the tactics and standards used by Judge Southwick's critics are wrong and illegitimate, and the conclusions about him based on those tactics are simply not credible. I think they know that.

And they certainly do not justify doing an about-face and voting against a nominee who, just months ago, received the Judiciary Committee's unanimous support.

Illegitimate tactics leading to less than credible conclusions do not justify disregarding the judgment of our colleagues, the Senators from Mississippi, who are this nominee's home State Senators.

Let me close with one more point.

In their opposition letter, the Congressional Black Caucus says that we "should be impressed by the frequency with which Southwick's opinions and concurrences have been overruled." That is pure, unadulterated hogwash.

Judge Southwick authored 927 opinions and concurrences while on the Mississippi Court of Appeals and only 21 of them have been either reversed or even criticized by the Mississippi Supreme Court in 12 years. I don't know of many judges who have such an unblemished record.

I must say that I am indeed impressed by the frequency with which Judge Southwick's opinions and concurrences have been overruled.

I am very impressed with such a low reversal rate over such a long period of distinguished judicial service.

And I note that Kay Cobb, former presiding justice of the Mississippi Supreme Court, the court that reviewed Judge Southwick's decisions, has written with enthusiastic support of his nomination.