

heads have yet told Congress what standard they believe they would be inclined or required to use. This means that if an agency head “determines” that a particular individual is responsible for a particular anonymous publication, he or she could conceivably take action to revoke that individual’s pension benefits even if the agency does not have enough proof to convict the employee in court.

Section 403 states that agency heads must act “in a manner consistent with the due process and appeal rights otherwise available to an individual who is subject to the same or similar disciplinary action under other law.” But federal agencies do not normally take away the pension benefits of former employees unless they are convicted of a crime or begin openly working for a foreign government. I do not believe that this “otherwise available” language is intended to require the government to get a criminal conviction, but beyond that I am not at all sure what impact this language is supposed to have and I am not sure that the various intelligence agency heads will know what it means either. This only increases my concern that this provision could be used to undermine or violate the due process rights of intelligence agency employees, with a corresponding impact on their family members and dependents.

I am also especially troubled that section 403 is silent regarding disclosures to Congress and inspectors general. Everyone hopes that intelligence agency managers and supervisors will act honorably and protect whistleblowers who come forward and go through proper channels to report waste, fraud and abuse in national security agencies, but this is unfortunately not always the reality. There are existing laws in place that are intended to protect whistleblowers who provide information to Congress and inspectors general—and I believe that these laws should be strengthened—but section 403 does not specify whether it would supersede these existing statutes or not. I know that none of my colleagues would deliberately do anything to undermine protections for legitimate whistleblowers, but I think it was a mistake for the Intelligence Committee to report this bill without hearing the intelligence agencies’ views on whether or not they believe that section 403 would impact existing whistleblower protections.

It is unfortunately entirely plausible to me that a given intelligence agency could conclude that a written submission to the congressional intelligence committees or an agency inspector general is an “unauthorized publication,” and that the whistleblower who submitted it is thereby subject to punishment under section 403, especially since there is no explicit language in the bill that contradicts this conclusion. Withholding pension benefits from a legitimate whistleblower would be highly inappropriate, but over-

zealous and even unscrupulous individuals have served in senior government positions in the past, and will undoubtedly do so again in the future. This is why it is essential to have strong protections for whistleblowers enshrined in law, and this is particularly true for intelligence whistleblowers, since, given the covert nature of intelligence operations and activities, there are limited opportunities for public oversight. But reporting fraud and abuse by one’s own colleagues takes courage, and no whistleblowers will come forward if they do not believe that they will be protected from retaliation.

Finally, I am somewhat perplexed by the fact that section 403 creates a special avenue of punishment that only applies to accused leakers who have worked directly for an intelligence agency at some point in their careers. There are literally thousands of employees at the Departments of Defense, State and Justice, as well as the White House, who have access to sensitive information. Some of the most serious leaks of the past few decades have undoubtedly been made by individuals working for these organizations. I do not see an obvious justification for singling out intelligence community employees, particularly in the absence of evidence that these employees are responsible for a disproportionate number of leaks. And I am concerned that it will be harder to attract qualified individuals to work for intelligence agencies if Congress creates the perception that intelligence officers have fewer due process rights than other government employees.

Withholding pension benefits from individuals who are convicted of disclosing classified information will often be an appropriate punishment. This punishment is already established in existing laws, and I would be inclined to support efforts to clarify or strengthen these laws. But I am not inclined to give agency heads broad authority to take away the pensions of individuals who have not been convicted of wrongdoing, particularly when the agency heads themselves have not even told Congress how they would interpret and implement this authority. This is why I voted against this authorization bill. All of my colleagues and I agree that illegal leaks are a serious problem, but this does not mean that anything at all that is done in the name of stopping leaks is necessarily wise policy.

I look forward to working with my colleagues to amend this bill, and I am hopeful that they will be willing to modify or remove section 403 to address the concerns I have raised. In the meantime, I should be clear that it is my intention to object to any request to pass the current version of the bill by unanimous consent.

## RECOLLECTIONS OF PRESIDENT RICHARD W. LARIVIERE, UNIVERSITY OF OREGON

Mr. WYDEN. Mr. President, recently, the president of the University of Oregon, Richard Lariviere, came to meet with me in my office. The University of Oregon is my law school alma mater, and I was commiserating with President Lariviere about the Ducks’ narrow loss in the BCS national championship football game. President Lariviere told me about a wonderful speech that Coach Chip Kelly gave to his players after the game. I asked President Lariviere to share the story with me in writing; and with his permission and that of Coach Kelly, I would like now to share that story with my colleagues:

### Recollections of President Lariviere:

On January 10, 2011 when the final whistle ended the BCS national championship football championship game, the University of Oregon was behind by three points—three points scored by our friends from Auburn in the final two seconds of the game.

The UO players made their way to the locker room, disappointed needless-to-say. Coach Chip Kelly talked to his players, and his remarks were just what any university president would want to hear from a head coach, made more remarkable and emotional because of the magnitude and unprecedented nature of the moment.

With the team gathered around him, Coach Kelly told these student athletes that they had played a great game, that he was proud of them, and that he could not have asked for more. Then he said this:

“In ten minutes the media will come in here and they’re going to ask you how you feel. They’re going to tell you that this is a defining moment in your lives. I want you to know that this is not a defining moment in your lives. You are young men who play football, but football does not define you. A defining moment will be when you graduate, when you marry, when you have children. Those are the moments that define your lives.”

Then Coach Kelly turned to each of the seniors and reminded them of the promise they made to him that they would graduate.

In that locker room with a team that accomplished what no other Oregon football team had ever done, Coach Chip Kelly represented the very best values that have come to be associated with the University of Oregon: bold and audacious, hard working and high achieving, and a focus on what really matters.

March 2011

## VOTE EXPLANATIONS

Mr. REED. Mr. President, due to my flight from Rhode Island being delayed, I was unavoidably absent for vote No. 47, the confirmation of Jimmie V. Reyna, of Maryland, to be United States Circuit Judge for the Federal Circuit. Had I been present, I would have voted to confirm this nomination.

Ms. STABENOW. Mr. President, yesterday, because I had the flu, I was not able to attend rollcall vote No. 47, to confirm Jimmie V. Reyna, of Maryland, to be United States Circuit Judge for the Federal Circuit.

Mr. Reyna’s nomination was given the highest possible rating by the American Bar Association, and his