RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

IMPROVING AMERICA'S SECURITY ACT OF 2007

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 4, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 4) to make the United States more secure by implementing unfinished recommendations of the 9/11 Commission to fight the war on terror more effectively, to improve homeland security, and for other purposes.

Pending:

Reid amendment No. 275, in the nature of a substitute.

Sununu amendment No. 291 (to amendment No. 275), to ensure that the emergency communications and interoperability communications grant program does not exclude Internet Protocol-based interoperable solutions.

Salazar/Lieberman modified amendment No. 290 (to amendment No. 275), to require a quadrennial homeland security review.

Lieberman amendment No. 315 (to amendment No. 275), to provide appeal rights and employee engagement mechanisms for passenger and property screeners.

McCaskill amendment No. 316 (to amendment No. 315), to provide appeal rights and employee engagement mechanisms for passenger and property screeners.

Dorgan/Conrad amendment No. 313 (to amendment No. 275), to require a report to Congress on the hunt for Osama bin Laden, Ayman al-Zawahiri, and the leadership of al-Qaida.

Landrieu amendment No. 321 (to amendment No. 275), to require the Secretary of Homeland Security to include levees in the list of critical infrastructure sectors.

Landrieu amendment No. 296 (to amendment No. 275), to permit the cancellation of certain loans under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

Landrieu amendment No. 295 (to amendment No. 275), to provide adequate funding for local governments harmed by Hurricane Katrina of 2005 or Hurricane Rita of 2005.

Allard amendment No. 272 (to amendment No. 275), to prevent the fraudulent use of Social Security account numbers by allowing the sharing of Social Security data among agencies of the United States for identity theft prevention and immigration enforcement purposes.

McConnell (for Sessions) amendment No. 305 (to amendment No. 275), to clarify the voluntary inherent authority of States to assist in the enforcement of the immigration laws of the United States and to require the Secretary of Homeland Security to provide information related to aliens found to have violated certain immigration laws to the National Crime Information Center.

McConnell (for Cornyn) amendment No. 310 (to amendment No. 275), to strengthen the Federal Government's ability to detain dangerous criminal aliens, including murderers, rapists, and child molesters, until they can be removed from the United States.

McConnell (for Cornyn) amendment No. 311 (to amendment No. 275), to provide for immigration injunction reform.

McConnell (for Cornyn) amendment No. 312 (to amendment No. 275), to prohibit the recruitment of persons to participate in terrorism.

McConnell (for Kyl) modified amendment No. 317 (to amendment No. 275), to prohibit the rewarding of suicide bombings and allow adequate punishments for terrorist murders, kidnappings, and sexual assaults.

McConnell (for Kyl) amendment No. 318 (to amendment No. 275), to protect classified information.

McConnell (for Kyl) amendment No. 319 (to amendment No. 275), to provide for relief from (a)(3)(B) immigration bars from the Hmong and other groups who do not pose a threat to the United States, to designate the Taliban as a terrorist organization for immigration purposes.

McConnell (for Kyl) amendment No. 320 (to amendment No. 275), to improve the Classified Information Procedures Act.

McConnell (for Grassley) amendment No. 300 (to amendment No. 275), to clarify the revocation of an alien's visa or other documentation is not subject to judicial review.

McConnell (for Grassley) amendment No. 309 (to amendment No. 275), to improve the prohibitions on money laundering.

Thune amendment No. 308 (to amendment No. 275), to expand and improve the Proliferation Security Initiative while protecting the national security interests of the United States.

Cardin amendment No. 326 (to amendment No. 275), to provide for a study of modification of area of jurisdiction of Office of National Capital Region Coordination.

Cardin amendment No. 327 (to amendment No. 275), to reform mutual aid agreements for the National Capital Region.

Cardin modified amendment No. 328 (to amendment No. 275), to require Amtrak contracts and leases involving the State of Maryland to be governed by the laws of the District of Columbia.

Schumer/Clinton amendment No. 336 (to amendment No. 275), to prohibit the use of the peer review process in determining the allocation of funds among metropolitan areas applying for grants under the Urban Area Security Initiative.

Schumer/Clinton amendment No. 337 (to amendment No. 275), to provide for the use of funds in any grant under the Homeland Security Grant Program for personnel costs.

Collins amendment No. 342 (to amendment No. 275), to provide certain employment rights and an employee engagement mechanism for passenger and property screeners.

Coburn amendment No. 325 (to amendment No. 275), to ensure the fiscal integrity of grants awarded by the Department of Homeland Security.

Sessions amendment No. 347 (to amendment No. 275), to express the sense of the Congress regarding the funding of Senate-approved construction of fencing and vehicle barriers along the southwest border of the United States.

Coburn amendment No. 345 (to amendment No. 275), to authorize funding for the Emergency Communications and Interoperability Grants program, to require the Secretary to examine the possibility of allowing commercial entities to develop public safety communications networks.

Coburn amendment No. 301 (to amendment No. 275), to prohibit grant recipients under grant programs administered by the Department from expending funds until the Secretary has reported to Congress that risk assessments of all programs and activities have been performed and completed, improper payments have been estimated, and corrective action plans have been developed and reported as required under the Improper Payments Act of 2002 (31 U.S.C. 3321 note).

Coburn amendment No. 294 (to amendment No. 275), to provide that the provisions of the Act shall cease to have any force or effect on and after December 31, 2012, to ensure congressional review and oversight of the Act.

Lieberman (for Menendez) amendment No. 354 (to amendment No. 275), to improve the security of cargo containers destined for the United States.

Specter amendment No. 286 (to amendment No. 275), to restore habeas corpus for those detained by the United States.

Kyl modified amendment No. 357 (to amendment No. 275), to amend the data-mining technology reporting requirement to avoid revealing existing patents, trade secrets, and confidential business processes, and to adopt a narrower definition of data mining in order to exclude routine computer searches.

Ensign amendment No. 363 (to amendment No. 275), to establish a Law Enforcement Assistance Force in the Department of Homeland Security to facilitate the contributions of retired law enforcement officers during major disasters.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 10 a.m. shall be equally divided and controlled by the Senator from Missouri, Mrs. MCCASKILL, and the Senator from Maine, Ms. COLLINS, or their designees.

The majority leader is recognized.

AMENDMENT NO. 316, AS MODIFIED, TO AMENDMENT NO. 275; AND AMENDMENT NO. 315 WITHDRAWN

Mr. REID. Mr. President, I now ask unanimous consent that the McCaskill amendment No. 316 be modified to be a first-degree amendment and that the Lieberman amendment No. 315 be withdrawn.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. REID. Mr. President, I withhold for 1 second.

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

Mr. REID. Mr. President, I renew my unanimous consent request.

The ACTING PRESIDENT pro tempore. Is there objection?

The Chair hears none, and it is so ordered.

The amendment (No. 316), as modified, is as follows:

On page 219, after line 7, insert the following:

SEC. ___. APPEAL RIGHTS AND EMPLOYEE ENGAGEMENT MECHANISM FOR PASSENGER AND PROPERTY SCREENERS.

(a) APPEAL RIGHTS FOR SCREENERS.—

(1) IN GENERAL.—Section 111(d) of the Aviation and Transportation Security Act (49 U.S.C. 44935 note) is amended—

(A) by striking ''Notwithstanding'' and inserting the following:

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3) notwithstanding''; and

(B) by adding at the end the following:

''(2) RIGHT TO APPEAL ADVERSE ACTION.—The provisions of chapters 75 and 77 of title 5, United States Code, shall apply to an individual employed or appointed to carry out the screening functions of the Administrator under section 44901 of title 49, United States Code.

''(3) EMPLOYEE ENGAGEMENT MECHANISM FOR ADDRESSING WORKPLACE ISSUES.—The Under Secretary of Transportation shall provide a collaborative, integrated, employee engagement mechanism, subject to chapter 71 of title 5, United States Code, at every airport to address workplace issues, except that collective bargaining over working conditions

shall not extend to pay. Employees shall not have the right to engage in a strike and the Under Secretary may take whatever actions may be necessary to carry out the agency mission during emergencies, newly imminent threats, or intelligence indicating a newly imminent emergency risk. No properly classified information shall be divulged in any non-authorized forum.''.

(2) CONFORMING AMENDMENTS.—Section 111(d)(1) of the Aviation and Transportation Security Act, as amended by paragraph (1)(A), is amended—

(A) by striking ''Under Secretary of Transportation for Security'' and inserting ''Administrator of the Transportation Security Administration''; and

(B) by striking ''Under Secretary'' each place such appears and inserting ''Administrator''.

(b) WHISTLEBLOWER PROTECTIONS.—Section 883 of the Homeland Security Act of 2002 (6 U.S.C. 463) is amended, in the matter preceding paragraph (1), by inserting '', or section 111(d) of the Aviation and Transportation Security Act,'' after ''this Act''.

(c) REPORT TO CONGRESS.—

(1) REPORT REQUIRED.—Not later than 6 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives a report on—

(A) the pay system that applies with respect to TSA employees as of the date of enactment of this Act; and

(B) any changes to such system which would be made under any regulations which have been prescribed under chapter 97 of title 5, United States Code.

(2) MATTERS FOR INCLUSION.—The report required under paragraph (1) shall include—

(A) a brief description of each pay system described in paragraphs (1)(A) and (1)(B), respectively;

(B) a comparison of the relative advantages and disadvantages of each of those pay systems; and

(C) such other matters as the Comptroller General determines appropriate.

(d) This Section shall take effect one day after date of enactment.

The ACTING PRESIDENT pro tempore. The Senator from Maine.

AMENDMENT NO. 342

Ms. COLLINS. Mr. President, later today, the Senate will vote on the amendment I have offered with a number of my colleagues—Senator STEVENS, Senator WARNER, Senator COLEMAN, Senator SUNUNU, and Senator VOINOVICH—that would provide certain employment rights for the Transportation Security Administration's employees.

Throughout our committee's work on homeland security, it has become clear the ability to respond quickly and effectively to changing conditions, to emerging threats, to new intelligence, to impending crises is essential. From the intelligence community to our first responders, the key to an effective response is flexibility—putting assets and, more importantly, personnel where they are needed when they are needed with a minimum of bureaucracy.

My questions about giving TSA employees the right to collectively bargain center around whether this right would hamper flexibility at a critical time. I have long been a supporter of Federal employees throughout my time in the Senate. I have worked in the public sector virtually my entire life, and I know how hard individuals at all levels of Government work to provide services to protect us and to serve us.

It is my hope we can forge a compromise that preserves the flexibility—we have learned in classified briefings from Kip Hawley, the head of TSA—that is needed while at the same time recognizing that TSA employees deserve more employment rights. These employees are working hard every day to protect us. We should protect them.

The TSA is charged with a great responsibility. In order to accomplish its critical national security mission, the Aviation Transportation Security Act provided the TSA Administrator with workforce flexibilities. These flexibilities allow the TSA Administrator to shift resources and to implement new procedures daily, in some cases hourly, in response to emergencies, canceled flights, and changing circumstances. This authority enables TSA to make the best and fullest use of its highly trained and dedicated workforce.

This is not just theoretical. We have already seen the benefits of this authority and this flexibility. In both the aftermath of Hurricane Katrina and the thwarted airline bombing plot in Great Britain last year, TSA moved quickly to change the nature of its employees' work—and even the location of that work—in response.

Last December, when blizzards hit the Denver area and many local TSOs were unable to get to the airport, TSA acted quickly, flying in volunteer TSOs from Las Vegas to cover the shifts, and covering the Las Vegas shifts with officers who were transferred temporarily from Salt Lake City. Without this ability to deploy needed personnel where they were needed, on a moment's notice, the Denver airport would have been critically understaffed while hundreds, perhaps thousands, of travelers were stranded. This flexibility is essential.

An even better example was the work that was done in the aftermath of the thwarted airline bombing plot last summer, where TSA, overnight, had to retrain its employees, had to deploy them differently, and was able to do so because of the flexibility that is in the current law.

The legislation before the Senate is designed to implement the unfulfilled recommendations of the 9/11 Commission. Many of the recommendations were enacted in 2004 as part of the Intelligence Reform and Terrorism Prevention Act Senator LIEBERMAN and I authored and worked so hard on. But the language concerning TSA employees' bargaining rights is an issue that was not addressed in this report. You can read this report, as I have, from cover to cover—I think it is 567 pages—and you will not find a discussion of collective bargaining rights for TSA employees. So this is not a recommendation that was included in the 9/11 Commission's report.

Before we so drastically change the TSA personnel system, we must ensure we do not interfere with TSA's ability to carry out its mission. I want to make clear that we should, however, make some changes in the system now. We have had enough experience with TSA over the past few years that there are a number of things that are obvious.

First, we should bring TSA employees under the Whistleblower Protections Act which safeguards the rights of whistleblowers throughout the Federal Government. There is no reason to deny TSA employees that protection. My amendment would provide for that coverage.

Second, we should make very clear that TSA members do have the right to join a union. That is a different issue from collective bargaining. Indeed, many TSA employees have chosen to join the union because then they have the right to representation by the union if there is a disciplinary action. So we should make that clear.

Third, we should give TSA employees the right to an independent appeal of disciplinary actions, of adverse employment actions such as demotions or firings, and have that appeal heard by an independent agency, the Merit Systems Protection Board. It is this board that sits in judgment of appeals filed by other Federal employees, and I see no reason why the TSA employees should not have those same rights.

Fourth, the amendment includes a provision codifying the pay-for-performance system that TSA has used very successfully to retain and recruit good employees.

Finally, the amendment we are offering provides for TSA, in a year's time, to come back to us with a report on whether other changes are needed in the personnel system. We have also tasked GAO with performing that duty. Now, that is important because we are still learning about TSA. As I said, I think we can make these significant changes now, but we need more time and study and consideration before going further, and that is why I have recommended that we have this report back.

The Homeland Security and Governmental Affairs Committee's subcommittee which has jurisdiction over civil service issues just this week held its first hearing to look at this issue. So there is a lot of work that still needs to be done, but I think we can proceed now to provide these important protections.

As we strive to protect our Nation and our people without diminishing civil liberties, we must do all we can to build a strong homeland security structure that upholds the rights of homeland security personnel. I believe we can provide TSA employees with important protections enjoyed by other Federal employees, such as the right to appeal adverse employment actions to

the Merit Systems Protection Board and the statutory right to whistleblower protections, without disrupting TSA's established and proven personnel system. That personnel system was described in great detail to us in a classified briefing session as well as an open hearing as being necessary to accomplish the goals of the agency. So my amendment would give these rights to TSA employees.

I have been working to try to achieve a middle ground between those who believe there should be no employment rights for TSA employees and those who believe we should allow them to engage in full collective bargaining. That is what my amendment attempts to do, is to chart that middle ground, to provide significant additional protections and rights to TSA employees without burdening a system that is working effectively.

I urge my colleagues to support the amendment when we vote on it later today.

Mr. President, I yield the floor.

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

AMENDMENT NO. 316, AS MODIFIED

Mrs. MCCASKILL. Mr. President, I have a great deal of respect for the Senator from Maine, and I am not just saying that, but I must rise to urge support of my amendment on this bill. Along with Senator LIEBERMAN, I offered an amendment to the 9/11 bill that would provide these basic rights to our airport screening officers. This amendment was in response to the incredibly high turnover rate they have at TSA and the realization that these officers are being treated differently than just about everybody else we see in uniform in the United States of America.

After 9/11, there was an incredible demand around the country for hats and shirts that said ''New York Fire Department'' and ''NYPD'' because all of America realized the heroes these men were. When everyone else is running away from danger, the firefighters run into danger. When everyone's instinct is to flee in fear, they face that fear and they go into the breach. Our police officers do it all the time. In fact, this morning, the first people I saw when I came to the Capitol were Capitol police officers greeting me, checking my car, and standing guard around the Capitol to make sure we are protected from someone who would want to do our country harm.

The irony of this debate is that all of those people I just talked about have these basic worker protections. Those men who gave their lives on 9/11 trying to save lives all were operating under collective bargaining. The Capitol Police, who protect us every day, operate under these same rules that my amendment is going to guarantee to the airport screening officers.

Why in the world, if the sky is going to fall, if we give these workers these basic protections, why hasn't it fallen? Border Patrol, Customs agents, Coast Guard, FEMA, the Department of Defense civil employees—they were all ordered to do things after 9/11, and they, of course, did them. No one thought twice about falling back on some kind of worker protection. Frankly, I think it is moderately insulting to the men and women who are serving as screeners to act as if they would not be directed and go in a time of emergency.

That is what my amendment does. It says that the head of TSA, the director of Homeland Security, the Secretary of Homeland Security, has the ability, at any time when there is a threat or an emergency, to direct these officers to do whatever is necessary to protect our country and the people who live here. It goes even further. It says they can't even bargain for higher pay, and it provides some of the same protections provided in the amendment of the Senator from Maine.

I can't figure out why the idea that they would have worker protections through a collective bargaining agreement is so scary when you realize that most of the men and women around our country who are fighting fires and performing work are operating under those agreements, and obviously most of the Federal employees who do similar work in the Federal Government.

There are so many things that have been claimed about this which simply aren't true. One of my favorites is that it is going to cost $160 million. Now, I can't quite figure out—and I know that somehow, something that costs a little ends up costing a lot sometimes in the Federal Government. First they said it was going to be $350 million. I think that figure made even them blush, so then they brought the figure down to $160 million. Maybe it is going to take 7 to 12 people across the country. I can't imagine where they would get a number like that to throw around. I have heard they will be required to negotiate every security protocol. That is simply not true. Federal employees have no right to bargain over an agency's internal security practices.

There has been a lot of fiction that has been spread around the Capitol over the last few days about this amendment and what it will provide. It is going to provide something very simple: It is going to treat these officers who are screening men and women every day at our airports the same way the rest of the employees in FEMA are treated, the rest of the employees in Homeland Security are treated, our Capitol Police, our Coast Guard, our Border Patrol, and the men and women who went into the burning buildings on 9/11, to lose their lives in order to try to save lives.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. LIEBERMAN. Mr. President, I note the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

Mr. KYL. 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.

Mr. KYL. Mr. President, I want to talk about a couple of the amendments that we have to the so-called 9/11 bill that is pending—an amendment which I hope can be adopted, one of which I talked about yesterday, which deals with the support for terrorists.

Believe it or not, we don't have adequate criminal penalties for people who support rewarding terrorists for their actions or their families or those who support them. So one of the things we want to do is to ensure that we have a statute that can be enforced that says, if you are aiding the family or associates of a terrorist with the intent to encourage terrorist acts, that will be a crime prosecutable in the United States.

I talked yesterday about an example that illustrates the need for this statute. In August of 2001, a Palestinian suicide bomber attacked the Sbarro pizza parlor in Jerusalem, and 15 people were killed. One of them was an American citizen, Shoshana Greenbaum, who was a schoolteacher, and she was pregnant. She was killed. Right after the bombing took place, the family of the suicide bomber was told to go to a particular Arab bank, and the bomber's family began receiving money from that bank. Eventually, a $6,000 lump sum payment was made.

According to press accounts, this is not uncommon. In fact, it is frequently the way suicide bombers have been funded through this particular Arab bank. Others are funded in other ways. There are plenty of news accounts of Saudi charities, the Palestinian Authority, and even Saddam Hussein was known to have rewarded suicide bombers for their acts. There is a BBC report that Saddam Hussein paid a total of $35 million to terrorist families during their time. Obviously, we would like to discourage that.

It is at least possible that if we can criminalize this activity that has a relationship to Americans, we would be able to make a difference, at least in some instances, in terms of whether a person would actually decide to commit a suicide bombing, based upon the fact that that person's family was going to be recompensed.

This amendment would make it a Federal crime, with extraterritorial jurisdiction in cases linked to U.S. interests, to pay the families of suicide bombers and terrorists with the intent to facilitate a terrorist act.

I hope this amendment can be adopted and that it will survive a conference committee. I see no reason that we could not have bipartisan support for it. The other thing that this amendment does is deal with the real workhorse of our law enforcement with respect to going after terrorists, the so-

called material support statutes. It increases the maximum penalties for various material support statutes. I emphasize it increases the maximum, not the minimum, because there are certain situations in which sometimes you want to charge the minimum or plead down to the minimum. We don't want to affect that; we want to increase the maximum in certain instances.

The material support statutes have been the Justice Department's workhorse in the war against terror, counting for a majority of the prosecutions that the Department has brought. It has been very effective, also, in starving terrorist groups of resources, which is one of the critical ways to disrupt the cells, we believe.

The amendment increases the penalty in the following ways: Giving material support for a designated terrorist organization would be a maximum of 25 years, up from 15. Material support in the commission of a particular terrorist act is increased from a maximum number of 15 to a maximum of 40 years. That can obviously be a very severe act against U.S. interests. The maximum penalty for receiving military-type training from a foreign terrorist organization would be increased from 10 to 15 years. The amendment also adds attempts and conspiracies to the substantive offense of receiving military-type training and denies Federal benefits to persons convicted of terrorist offenses.

All of these are designed to add to the ability of our prosecutors to go after people who are actually the ones who are enabling the terrorists to perform their heinous acts.

Finally, the amendment expands existing proscriptions on the murder or assault of U.S. nationals overseas for terrorist purposes, so that the law punishes attempts and conspiracies to commit murder equally to the substantive offense. The amendment adds a new offense of kidnapping a U.S. national for terrorist purposes, regardless of whether a ransom is demanded. There are some limits in existing law that were put in the act before the new techniques and methodologies of terrorists in today's world began to be implemented; for example, requiring a ransom. We know today that some of these terrorist kidnappings are not for the purpose of getting ransom, they are for the purpose of terrorizing. If that is the case, then this statute would be usable by our law enforcement authorities.

Finally, the amendment adds sexual assault to the types of injury that are punishable under the existing offense of assaults that result in serious bodily injury.

Once again, I hope this will be considered an appropriate addition to the 9/11 legislation to make it easier for us to deny the funding to terrorist organizations and to deny funding to people who would be engaged in suicide attacks.

The other amendment is an amendment to a provision of the bill that was added by Senator FEINGOLD relating to data mining, which requires every Federal agency to submit reports to Congress on any search of a database that its employees perform in order, and I am quoting now, ''to discover or locate a predictive pattern or anomaly indicative of terrorist or criminal activity.'' Among other things, the report is required to include a thorough description of the data-mining technology that is being used or will be used.

Obviously, that probably is going to be getting into very classified information, and there are two things we want to ensure are changed in this provision. For one thing, the language in the bill does not include language that is included in other sections. It does not prevent disclosure of existing patents, trade secrets, proprietary business processes or intelligence sources and methods.

I suspect that is an oversight. We need to include that because, in the past, when Congress has required the Executive to make reports on sensitive technologies to Congress, it has been careful to prevent the exposure of this type of information about patents and trade secrets, and so on. I hope we can include that in the legislation, and my staff has been talking to Senator FEINGOLD's staff to see if they would be willing to do so.

The other aspect is trying to protect the information that is classified. Originally, there was a concern that we were too broad with our proscription in trying to prevent classified information from being released to the public. So what we did was to modify the amendment to simply require that in the case of disclosure by Members of Congress or staff, this would be impermissible for classified information. If we are going to ask for reports of classified information, clearly, we should be willing to enforce the proscription on the release of that information. I am hoping we would be willing to do that as well.

That is the second amendment. I hope my colleagues will be willing to support both amendments. I think they will add to the benefits of this legislation. With respect to at least one of these amendments, it is germane postcloture, but I am hoping we can get them both resolved before cloture is invoked on the bill.

Mr. President, I yield the floor.

Mr. VOINOVICH. Mr. President, I rise today to voice my support for amendment 342. I am proud to join my good friend, the Senator from Maine, the ranking member of the Committee on Homeland Security and Governmental Affairs, in cosponsoring this amendment.

For the past several days, this body has been debating various amendments regarding the workforce authorities for the Transportation Security Administration. I would ask my colleagues to stop for a moment and consider the situation before us. The establishment of the Department of Homeland Security is one of the largest undertakings this Government has initiated since the creation of the Department of Defense in 1947. It includes a merger of 22 agencies and approximately 180,000 employees. This merger is so complicated that the Government Accountability Office has identified the implementation and transformation of the Department as one of the 27 areas designated as high risk, subject to waste, fraud, abuse, and mismanagement.

Many of my colleagues will recall the debate the Senate engaged in during the creation of the TSA. The Senate debated basic questions such as whether the screening function should be federalized. There was a lot of debate that it ought not to be federalized; that we should let the private sector do it. In the end, screeners were federalized, and TSA was charged with hiring approximately 55,000 screeners, or transportation security officers, in 1 year.

I cannot think of a greater Government undertaking than creating an agency overnight to secure the safety and security of our airports and the traveling public in order to guarantee we never have another 9/11. I am absolutely convinced that if Congress did not provide TSA with the workforce flexibilities it did, TSA would never have met its statutory mandate to stand up in 1 year. Think about that. We got that done in 1 year.

My colleagues know I have not been the biggest fan of the Department of Homeland Security. I am still upset that the only high-risk area identified by GAO that does not have a strategic plan in place is DHS. That is why I am so pleased the underlying bill contains an amendment I offered in committee to establish a chief management officer for the Department. This 5-year term appointment is crucial to leading the transformation of the Department so it does not hobble along from one administration to another, struggling to complete its merger and its mission.

I hope my colleagues have had the opportunity to meet with Assistant Secretary Kip Hawley, the TSA Administrator, who I think is one of the finest public administrators whom I have met so far in this administration. Mr. Hawley was confirmed in this position in July of 2005. This is the second position at TSA he has held. In October 2001, Mr. Hawley was the senior adviser for the project team that worked to stand up the Agency. While TSA is by no means perfect, it is one of the more successful operating components of DHS. I wish others were as good.

There is no question our enemies want to do harm to us through our airline and transportation systems. This threat is unrelenting, and TSA must be flexible, nimble, and innovative in order to respond to the 24-hour, 7-day-a-week threat we have. The threat is out there constantly. It is not akin to something that happens every so often. It is there 24 hours a day.

Granted, as in all organizations, human capital at TSA is not perfect,

but I have not seen any evidence that we need to throw the baby out with the bathwater; in other words, get rid of the system in place now and go to something else. There is no evidence to support this dismantling of TSA's personnel system and beginning anew, as the Senator from Connecticut has suggested.

To my knowledge, the Senate has had one hearing on the TSA workforce, and that hearing was held this Monday in the Committee on Homeland Security and Governmental Affairs, of which I am the ranking member. This hearing was conducted after the committee adopted the amendment by the Senator from Connecticut. One can only conclude that the amendment was offered in response to labor's unhappiness. Labor was unhappy several years ago that the title V provisions were waived for TSA. In other words, we gave them a separate personnel system because we wanted to see it get up and go and have the flexibility to get the job done.

On the other hand, based on the information presented at the hearing on Monday, I believe some reforms to TSA's personnel authority are necessary at this time. This is this compromise. That is why I am happy to join with my colleagues, including the Senator from Maine, the senior Senator from Alaska, and the senior Senator from Virginia, in offering this amendment.

While TSA has moved and continues to move in the right direction in providing safeguards for its employees, there is more we in Congress can do. After hearing testimony during Monday's hearing, I think it appropriate for the TSOs to be included in some basic workforce protections.

While the Office of Special Counsel did not have statutory authority to investigate whistleblower claims at TSA, TSA and the Office of Special Counsel worked together to develop and implement a memorandum of understanding allowing the OSC to investigate retaliation claims. In other words, they got involved through a memorandum. This was signed in 2002, and since that time OSC has received 124 whistleblower complaints.

While I applaud TSA for taking this step and signing the MOU, I believe it is important for Congress to extend through statute the full authority of OSC and the Federal courts to investigate and hear cases of whistleblower retaliation. Let's change the law. Let's give them that right.

After Monday's hearing, I also believe it is important to extend to TSO the ability to file a complaint with the Merit Systems Protection Board for an adverse action. This would include removal, suspension for more than 14 days, demotion, reduction in pay, or furlough. While I applaud TSA for developing and implementing a robust internal process, including an Ombudsman Office, Disciplinary Review Board, and Peer Review Board—they put all that in place—I believe the value of independent review of the MSPB that could follow the internal process is important to build further confidence in TSA's system and reassure those being hired and on the job. So you are going to have that available to you under the Collins amendment.

In the unfortunate circumstances when claims are filed with OSC, or should the Collins amendment be adopted, with MSP, TSOs also have the right to union representation during these proceedings. A lot of people are not aware of this fact, that we have members of 13 unions of the 42,000 TSOs. Some people got the idea that because we gave them the flexibility, they couldn't join a union. The fact is, they have joined. Many of them have joined a union, and the unions can represent them in the various appeals they may have in terms of personnel matters. However, something I learned during Monday's hearing is that the provision in the underlying bill would have a much broader implication on the workforce than reforming the personnel system. Using the authority in the Aviation Transportation and Security Act, TSA has been able to develop and implement the most extensive pay-for-performance system in the Federal Government. Did you hear that? Pay for performance in the Federal Government. That is a big deal. That is something which some of us have been working on—I have—for the last 8 years.

TSA has not developed this system in a vacuum. It received input from approximately 4,000 TSOs through 25 focus groups, and after the initial design, performance, accountability, and standards system—they call it PAF; that is their pay for performance—it was reviewed subsequently by focus groups and online surveys for additional feedback from the workforce.

Perhaps more than any Member of this Senate, I have devoted extensive time, as chairman and ranking member of the subcommittee on the oversight of Government and the Federal workforce, to understand and develop ways to recruit, retain, and reward people who work in the Federal Government. I have partnered successfully with my colleagues to enact legislation to provide agencies with even greater flexibility to meet their workforce needs.

We know that in order to be successful, we must have the right people with the right skills, with the right knowledge at the right place and at the right time. I do not believe it is appropriate for Congress to roll back any reform or flexibility without due consideration. Again, I remind my colleagues, the only hearing on this issue was held this week.

As I mentioned, I am a strong supporter of pay for performance. Here in TSA, the Federal Government has the largest group of employees under this system. The Government-wide Senior Executive Service covers only 6,000 employees, and the Department of Defense has made decisions for only 11,000 employees—in other words, 11,000 people in the Defense Department under pay for performance, 6,000 in the Senior Executive Service, and we have almost 55,000 in the TSA who are in pay for performance. Time and time again, Federal unions argue against pay for performance. This is a big deal. My colleagues ought to understand what this is about.

Monday, the president of the National Federation of Government Employees reasserted his union's opposition to pay for performance. He doesn't want pay for performance. If you ask the American people, they will tell you they would like to see pay for performance. At a hearing of the Subcommittee on Oversight of Government Management and the Federal Workforce that I chaired last year, unions testified against legislation I introduced that would have required at least a three-tiered rating system and prevented an employee whose job performance was unsatisfactory from receiving an annual pay increase.

I am concerned that changing the personnel system and potentially making it subject to collective bargaining would set back the progress TSA has made. My colleagues must remember that TSA has existed for just over 4 years and its performance and standards system is just a year old. GAO noted that it takes about 4 or 5 years to properly assess a performance management system. We are not yet in a position to judge how the TSA system is working.

The TSA's authority has allowed it to develop and implement innovative approaches through its strategic human capital management. TSA would lose that authority if the underlying provision of S. 4 were to be enacted into law. For example—this is really something unique—TSA has initiated a pilot program to provide health care benefits to part-time screeners. They know they need full time and part time. But most of the time, part-time people do not get health insurance. They are doing that right now. So if you look at some of the really neat things they are doing over there, it just does not make sense for us to pull the plug.

TSA recognizes the negative impact every screener who leaves TSA has on its ability to secure our transportation system. They know it costs $12,000 to hire and train a new screener. TSA knows it is in their best interests to retain every member of its dedicated workforce. They care about their employees. They want to motivate them; they want to reward them; they want to retain them, they want to reward them.

Another key provision of the Collins amendment is the reports providing assessment of employee matters by GAO and TSA within a year. A year from now, let's look at what is going on over there.

Congress must use this opportunity to fulfill its oversight objective and understand the strengths and shortfalls of the TSA system to make improvements. It is not appropriate for Congress to summarily dismiss all the work TSA has invested in its workforce just because a large Government employees union doesn't like it.

The main consideration we should have as Members of the Senate is the security of the people in the United States of America. Yes, we want to protect the rights of the people who work in the Federal Government. But if we have a system that is really working and making some real improvement and making sure we are not going to have another 9/11 from an airborne attack, we ought to let them continue to do the job they are doing and should not just snap our fingers and say: These people are unhappy about what is going on there. They think we ought to get rid of that system. I don't think we should do that. I think every Member of this Senate should think about it. This is real serious business.

I know people on the other side of the aisle are under a lot of pressure. So am I. I know the president of both of the major unions here, and I have worked with them and tried in all these changes we have made in the human capital laws of the United States of America to take their concerns into consideration. But on this one, I am really begging my friends on the other side of the aisle to really look at where we are today and what this is all about and not throw the baby out with the bath water.

I yield the floor.

The PRESIDING OFFICER (Mr. WHITEHOUSE). The Senator from Pennsylvania.

Mr. LIEBERMAN. Mr. President, if I may first ask unanimous consent that the Senate stand in recess at 10:40 subject to the call; and that at 1:30 p.m. today, there be 15 minutes of debate equally divided and controlled prior to a vote in relation to the McCaskill amendment No. 316, as modified, followed by a vote in relation to the Collins amendment No. 342; that there be 2 minutes of debate equally divided between the votes and that no amendments be in order to either amendment prior to the vote; that at 1:45 p.m., without further intervening action or debate, the Senate proceed to vote in the order specified.

The PRESIDING OFFICER. There is objection?

Mr. SPECTER. Mr. President, reserving the right to object, I would like to clarify the status of amendment No. 286, which I laid down yesterday, the habeas corpus amendment. I just discussed with the Senator from Connecticut a unanimous consent request that I would make to get recognition when we resume after King Abdullah's speech. Might I inquire of the Senator from Connecticut what the sequence would be as to a continuation of the debate on the habeas corpus amendment?

Mr. LIEBERMAN. Mr. President, if I may through the Chair, there are a number of Senators who said they wanted to come and discuss amendments after the Senate reconvenes. How much time did the Senator from Pennsylvania desire to discuss the habeas amendment?

Mr. SPECTER. It is hard to say because there are a number of Senators who want to debate the issue. I am advised that there is not a willingness to give a time agreement, so it is not possible to really answer that question.

Mr. LIEBERMAN. Understood. Maybe I misled the Senator unintentionally. I am not looking for a time agreement on debate on the amendment; I would just like to know how long he would like to speak when we reconvene so we set it down for a time limit because I know there are other Senators from both parties who want to come over.

Mr. SPECTER. I would like 1 hour.

Mr. LIEBERMAN. I would accept that amendment to my request, with the understanding that not interfere with the fact that by 1:30, we will go back to the Collins and McCaskill amendments. I don't think it would.

Mr. SPECTER. Mr. President, if I might be recognized at noon when we return after the Abdullah speech?

Mr. LIEBERMAN. I have no objection.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I just want to be clear that the Senator from Pennsylvania will not be changing the agreement the Senator from Connecticut just announced that will allow the 15 minutes of debate prior to the 1:45 votes.

Mr. LIEBERMAN. Not at all. Mr. President, I again ask unanimous consent on the unanimous consent agreement that I proposed with regard to the votes on the Collins and McCaskill amendments, and then we will come directly to Senator SPECTER.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. SPECTER. I ask unanimous consent that I be recognized when the Senate reconvenes at 12:00 to speak for 1 hour.

Mr. LIEBERMAN. Mr. President, I just would say, or whenever. If we come back before 12, you will be recognized to speak for an hour.

Mr. SPECTER. That is fine.

Mr. LIEBERMAN. Or after 12, if that is the case. We have no objection.

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

RECESS

The PRESIDING OFFICER. The Senate will stand in recess subject to the call of the Chair.

Thereupon, the Senate, at 10:43 a.m., recessed until 12:04 p.m. and reassembled when called to order by the Presiding Officer (Ms. KLOBUCHAR).

JOINT SESSION OF THE TWO HOUSES—ADDRESS BY THE KING OF JORDAN

The PRESIDING OFFICER. The Senate will proceed to the Hall of the House of Representatives to hear the address by the King of Jordan.

Thereupon, the Senate, preceded by the Deputy Sergeant at Arms, Drew Willison, and the Secretary of the Senate, Nancy Erickson, proceeded to the Hall of the House of Representatives to hear the address by His Majesty King Abdullah II Ibn Al Hussein, King of the Hashemite Kingdom of Jordan.

(The address delivered by the King of Jordan to the joint session of the two Houses of Congress is printed in the proceedings of the House of Representatives in today's RECORD.)

The PRESIDING OFFICER. Under the previous order, the Senator from Pennsylvania is recognized for up to 1 hour.

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

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

IMPROVING AMERICA'S SECURITY ACT—Continued

AMENDMENT NO. 286

Mr. SPECTER. Madam President, I have sought recognition to debate amendment No. 286, which would reverse the provision in the Military Tribunal Act which has limited the jurisdiction of the Federal courts in habeas corpus proceedings.

The essential question at issue is whether the combatant status review tribunals are adequate and effective to test the legality of a person's detention.

What we are dealing with here is an examination of the issue as to whether the procedures are fundamentally fair. Congress should repeal the provisions of the Military Commissions Act which limit Federal court jurisdiction on habeas corpus.

The decision by the court of appeals, I submit, will be overturned by the Supreme Court of the United States because of Circuit Court's ruling that the Rasul case dealt only with the statutory provisions on habeas corpus. The Circuit Court ignored the binding language of Rasul, which said that the habeas corpus rights were grounded in common law in effect in 1789 and were, in fact, part of the Constitution. Where habeas corpus is a right in the Constitution, and it is such a right because the Constitution expressly states that habeas corpus shall not be suspended except in cases of invasion or rebellion—and no one contends that there is either invasion or rebellion at issue—