

100 desks that don't belong to 100 Senators because they belong to the American people but where 100 Senators sit and work, if these desks reflected the odds of poor children living in our country succeeding educationally, things would look pretty grim in here. Forty-two out of the one hundred chairs in this place would be occupied by a child living in poverty—42. By the time our children in poverty got to the eighth grade, only 16 kids would be reading at grade level. That is four and four, four—that is about 16 desks. The rest of this Senate Chamber would be full of children who couldn't read at grade level in the eighth grade today in the 21st century in the United States of America. By the time our poor children would be graduating from college, only nine would be graduating from college—these two rows and that chair right there. The rest of this Chamber would have no college degree. In a global economy requiring that as a pathway to the middle class, to meaningful participation in the democracy, to meaningful participation in this global economy, 91 people in this place would be shut out because they were born into a ZIP Code that is poor. Those odds look pretty wrong to the kids who are living in those neighborhoods.

I have spent a lot of time with our kids in those neighborhoods, not just in Colorado but all across the United States of America. They think we have already made a promise to them, that they live in a land of opportunity that is going to reward their hard work, and if they stick with it, they are going to end up with a college degree. That is what they believe. We may have made that promise, but we certainly haven't followed through on that commitment.

Why should that matter to us? Some people look at that and say: Well, it is someone else's problem. I don't need to worry about it. McKinsey has done a study that shows us that the effect of those outcomes is to create a permanent recession in the United States. The effect of that dropout rate creates a permanent recession in the United States. That actually is about the same as the recession we just went through, which means if we are concerned with economic growth in the United States, we need to concern ourselves with the educational outcomes our kids in poverty are facing. If we are concerned with income inequality in the United States, we need to be concerned with the outcomes I just described.

Last year, the top 1 percent of income earners in this country earned 23 percent of the income—almost one-quarter of the income. The last time that was true was 1928. That doesn't lead me to conclude that somehow we should redistribute it, but it does lead me to conclude that we ought to fix our education system so more people have the chance to put themselves and their families into the middle class.

We can't afford in this country to repeat the decade we just went through.

We can't afford to have an economy where median income is falling. We can't afford to have an economy that is not creating jobs. We can't afford to carry a debt and deficit burden that at some point the capital markets are going to look at and say: We are not financing you anymore. We can't afford to fail to educate children in this country just because they are poor. I also think we can't afford to have an energy policy that commits us to a dependence on oil in the Persian Gulf. I think the people of Colorado and across this country are expecting us to do our jobs, just as they are doing their jobs.

I say again, I hope the leadership of both parties, working in good faith, can keep this government open, and I hope we can move on to a broader and more comprehensive conversation around debt, around deficit, around our economy, and around the education of our kids.

NOTICE OF INTENT TO OBJECT

Mr. WYDEN. Mr. President, I would like to briefly address the intelligence authorization bill for fiscal year 2011, which has now been reported by the Intelligence Committee. I filed additional views to the committee report accompanying the bill, and my remarks today will include a brief summary of those views.

I have now been a member of the Senate Intelligence Committee for over a decade—Senator FEINSTEIN, Senator ROCKEFELLER and I all began serving on the committee at the beginning of 2001, which I believe makes us the committee's longest-serving current members. In my time on the committee, I have become quite familiar with the intelligence authorization process.

It has now been almost 7 years since an intelligence authorization bill was signed into law during the fiscal year it was intended to cover, and although the 2011 fiscal year is now over halfway over, Congress still has an opportunity to provide useful guidance and direction regarding intelligence spending for this fiscal year. The fiscal year 2011 intelligence authorization bill is the product of substantial labor by both Chairman FEINSTEIN and Vice Chairman CHAMBLISS, as well as their respective staff, and I commend them both for their efforts and for the bipartisan manner in which they have worked to put it together.

Unfortunately, I have very serious concerns about one provision of this bill, and that is why I voted against it during the committee markup last month.

Section 403 of this bill would authorize the Director of National Intelligence, DNI, to establish an administrative process under which the DNI and the heads of the various intelligence agencies would have the authority to take away the pension benefits of an intelligence agency employee, or a former employee, if they "determine" that the employee has

knowingly violated his or her non-disclosure agreement and disclosed classified information.

I share my colleagues' frustration regarding unauthorized disclosures, or "leaks," of classified information. Leaks are a problem that has plagued intelligence agencies throughout modern history—they can undermine intelligence operations, jeopardize intelligence sources and methods, and have a terrible impact on the lives of covert agents who are publicly exposed. Every Member of Congress, myself included, wants to find new ways to identify and appropriately punish individuals who illegally disclose classified information. I personally spent 4 years working on legislation to increase the criminal penalty for people who are convicted of deliberately exposing covert agents. And I am proud to say that with help from a number of my Republican and Democratic colleagues, this legislation was finally signed into law last year. So I don't take a backseat to anybody when it comes to getting tough on leaks.

I agree that increasing penalties for particular offenses can sometimes have a deterrent effect on those who might otherwise be tempted to leak, so I support the creation of new consequences for individuals who have been convicted of illegally divulging classified information. But when it comes to leakers, the biggest challenge is not determining how to punish them as much as it is identifying who they are.

Given these challenges, my concern is that giving intelligence agency heads the authority to take away the pensions of individuals who haven't been formally convicted of any wrongdoing could pose serious problems for the due process rights of intelligence professionals, and particularly the rights of whistleblowers who report waste, fraud and abuse to Congress or inspectors general.

Section 403—as approved by the Select Committee on Intelligence—gives intelligence agency heads the power to take pension benefits away from any employee that an agency head "determines" has knowingly violated their nondisclosure agreement. But as I pointed out to my colleagues during the committee markup of this bill, neither the DNI nor any of the intelligence agency heads have asked Congress for this authority. Moreover, as of today none of the intelligence agencies have officially told Congress how they would interpret this language.

It is entirely unclear to me what standard agency heads would use to "determine" that a particular employee was guilty of disclosing information. It seems clear that section 403 gives agency heads the power to make this determination themselves, without going to a court of law, but the language of the provision provides virtually no guidance about what standard should be used, or even whether this standard could vary from one agency to the next. And no agency

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.

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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