

shootings in the city between 2004 and 2008, 37 of those shot were Black, none were White, one-third of the shootings resulted in fatalities, and although weapons were not found in 40 percent of the cases, no officers were charged. No wonder people are losing confidence that we truly do have a system where all of our citizens are treated equally under the law.

I have to point out that the Department of Justice is investigating the circumstances in the Ferguson and Michael Brown case. We will have to wait and see what happens with the Federal investigation, but the initial suspicions in many of these cases were solely because of the color of a person's skin, and that is why the individuals were stopped. They were not stopped because they were observed in criminal activities or because they had specific information about a crime that fit the description of the individual who was stopped. That is profiling and profiling is wrong.

Profiling is when the police target an individual, start an investigation, and do something because of race, religion or national origin. That is wrong. It does not work. If you have specific information about a crime, obviously you can use identifiers to deal with the investigation, and that is appropriate. But if you don't have specific information, then it is profiling, and profiling is just plain wrong. It is un-American. It is not what we believe in. It is not in our core values. It is a waste of resources because it doesn't help solve a problem. It turns communities against law enforcement, and we need communities working with law enforcement if we are going to have the most efficient law enforcement. As we have seen too frequently in recent years in the United States, it can be deadly. Profiling must end.

The Attorney General issued some guidance on profiling today. There were some things in there that I found helpful. For the first time the Justice Department guidelines will cover new categories, such as national origin, gender, gender identity, religion, and sexual orientation, while closing certain loopholes and narrowing some exemptions.

The guide mandates new data collection which makes it easier to track profiling complaints. It is all positive. For the first time we have specific guidelines against profiling, but it only applies to the Federal agencies. We need to act because only we can make it apply not just at the Federal level but at the State and local auxiliaries. We can close all loopholes so we do not allow profiling to take place in America, as we should, and we can give a private right of action so we can have enforcement of the laws that we pass. That is what we should do.

I have introduced legislation that does exactly that—The End Racial Profiling Act, S. 1038. I am proud to have as cosponsors Senators REID, DURBIN, BLUMENTHAL, COONS, HARKIN,

MENENDEZ, STABENOW, LEVIN, MIKULSKI, WARREN, BOXER GILLIBRAND, HIRONO, WYDEN, MURPHY, and WHITEHOUSE.

I am proud to say that in the House of Representatives the lead sponsor is JOHN CONYERS, who has been an iconic figure in the fight for civil rights, H.R. 2851. There are 59 cosponsors on the House bill.

The legislation we authored would provide training and mentoring for police departments so they have what they need. It prohibits all forms of profiling. It provides for data collection. It provides grants to develop best practices. It has broad support, including the support of the Leadership Conference on Civil and Human Rights, ACLU, NAACP, and the Rights Working Group.

America is a beacon of hope for people all around the world. They embrace our core values because they know what America stands for. It stands for every one of us being treated fairly under our laws. I am proud of our values, and I am proud of what we have been able to accomplish as a nation where we can enjoy religious freedom, where people can speak out however they want to about their government.

Let us take care of business first at home and recognize that we are not where we need to be. Recent events where people have lost their lives show how our system is not working and needs to be corrected. One thing we can do is pass the End Racial Profiling Act. As Senator Kennedy said, civil rights is the great unfinished business of America. We can end profiling by passing legislation.

I encourage my colleagues to work with me so we can end profiling and move one step closer to equal justice under the law for all Americans.

With that, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

#### UNANIMOUS CONSENT REQUEST— S. 1352

Mr. TESTER. Mr. President, as we hurry to finish things late in the year, we are running out of time to reauthorize the Native American Housing Assistance and Self-Determination Act, referred to as NAHASDA. This legislation was first passed in 1996 to consolidate Indian housing programs at the Department of Housing and Urban Development. This block grant replaced 14 different housing programs operating in Indian Country. The law has been previously authorized twice in a bipartisan manner.

The housing needs in Indian Country are staggering. A recent GAO report

stated that 5.3 percent of homes on Indian lands lacked complete plumbing. That compares to homes nationwide where less than 1 percent lack plumbing.

Tribal communities also face a serious housing shortage. In some cases, there are up to 20 people living in a single three-bedroom home. That is not by choice, by the way. That is by necessity. These are often extended families with three or four generations under one roof. This is unacceptable. We must do more to honor the trust responsibility the government has to American Indians.

The best tool we have to address this housing shortage is the Indian Housing Block Grant Program authorized by NAHASDA. Not passing this reauthorization places this program in jeopardy, and we should reauthorize it today.

Last year, during Senator CANTWELL's tenure as chair of the Committee on Indian Affairs, she introduced a reauthorization bill. This bill makes a number of positive changes to the law.

Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 334, S. 1352; that the committee-reported substitute amendment be agreed to; that the bill, as amended, be read a third time and passed; and that the motion to reconsider be considered made and laid upon the table with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

The Senator from Utah.

Mr. LEE. Mr. President, reserving the right to object, I prepared an amendment which is at the desk. The amendment I would like to offer would strike just one provision of this bill which is the reauthorization of the Hawaiian Homes Commission Act from this large reauthorization bill. The Hawaiian Homes Commission Act, in my view, is unconstitutional. It conditions benefits to certain residents of the State of Hawaii on their ancestry; that is, on what race they belong to, like the U.S. Supreme Court, which invalidated similar laws, making membership of a racial group an explicit qualification for certain benefits. I believe this act violates the constitutional guarantee of equal protection. I, therefore, cannot support the reauthorization without an amendment striking that same language. Accordingly, I respectfully request that my distinguished colleague, the senior Senator from Montana, modify his request to adopt my amendment which is at the desk and which would strike section 503.

The PRESIDING OFFICER. Will the Senator so modify his request?

Mr. TESTER. I object to the modification because of this: Setting aside the fact that Senator Inouye was a very good friend of mine, the Native Hawaiian Homelands Act was passed into law some time ago. As Native people, Native Hawaiians have sacrificed

their lands similar to Native people here and in Alaska. The Native Hawaiians here have similar needs to those whom I just explained.

The cost of housing in Hawaii is a significant barrier for Native Hawaiians. Reauthorizing the Native Hawaiian provisions will provide stability and assurances to keep housing programs for Native Hawaiians moving forward. For these reasons, I object to that modification.

The PRESIDING OFFICER. There is an objection to the modification.

Is there a further objection to the original request?

Mr. LEE. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. TESTER. I am disappointed that we cannot pass this legislation. This bill would not only reauthorize Indian housing programs with HUD but would streamline cumbersome environmental requirements and allow for more flexibility to build more modern, sustainable housing. This legislation would also reauthorize housing programs, as I said, for the Native Hawaiians, where the need exists in a big way.

I should also mention that the exact same provision was included in a bill that passed the Republican-controlled House of Representatives last week on a voice vote.

Finally, this legislation will make the HUD-VASH Program available to tribally designated housing authorities through the Indian housing block grant. These funds will be specifically used for housing assistance for homeless, Native veterans, as well as those who are at risk of becoming homeless.

As many of my colleagues know, American Indians serve at higher rates per capita than any other population in the military and continue to be one of the most underserved groups of veterans.

With all these good things in it, I am extremely disappointed that we cannot get this bill across the finish line. Housing Native people should be a priority for Congress as we wrap up this session.

It is frustrating to see a bill get through the House only to have potentially a couple of Senators here hoping to get a better report card from a group such as the Heritage Foundation.

I am sorry we cannot pass the bill today. This is disappointing for any country and the Senate. I am more than willing to talk about germane changes, but the bottom line is this: Many folks here do not understand the trust responsibilities we have to our Native American people. If we are going to start carving folks out such as the Native Hawaiians, we are going to be making two classes of Native American people in this country. I don't think that is fair to them, nor do I think it is fair to this country.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

## FOIA IMPROVEMENT ACT OF 2014

Mr. LEAHY. Mr. President, I am about to propound a unanimous consent request, but I should explain why. It is on the Freedom of Information Act, one of our Nation's most important laws. For nearly 50 years, FOIA has given Americans a way to access government information, ensuring their right to know what their government is doing. Today, the Senate is now poised to build on that important legacy with passage of the bipartisan Leahy-Cornyn FOIA Improvement Act.

The FOIA Improvement Act will codify what the President laid out in his historic executive order in 2009. This legislation will require Federal agencies to adopt a "Presumption of Openness", and make it a priority of the people's interest in what their government is doing. Our bill will reduce the overuse of exemptions to withhold information where there is no foreseeable harm. It will make information available for public inspection, and make frequently requested documents available online. It will provide the Office of Government Information Services (OGIS), with additional independence and authority to carry out its work. I believe this legislation reaffirms the fundamental premise of FOIA, that government information belongs to all Americans.

Passage of FOIA will help open the government to more than 300 million Americans whom the government is supposed to serve. The bill is supported by 70 public interest groups that advocate for government transparency. The Sunshine in Government Initiative said the Leahy-Cornyn bill "strengthens government transparency by limiting the ability of agencies to hide decades old documents from the public."

We reported this legislation out of the Judiciary Committee to the full Senate with unanimous support. Ranking Member GRASSLEY said the FOIA Improvement Act "opens wide the curtains and provides more sunlight on the Federal Government." Senator CORNYN has been my partner for many years on government transparency and noted our bipartisan efforts "open up the government and make it more consumer and customer friendly." I thank them both for their work on this legislation.

Today I ask that the Senate pass S. 2520, the bipartisan FOIA Improvement Act of 2014. We often talk about the need for government transparency, and many also note how rare it is that Democrats and Republicans can come together on any legislation. Today, we can accomplish both of those things but time is running out. We drafted this bill in a bipartisan fashion after a long and thoughtful process of consultation. It has broad support from a range of stakeholders.

I urge all Senators to support passage of this legislation today, so it can be taken up by the House, and sent to the President to be signed into law before the end of this Congress.

Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 605, S. 2520.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 2520) to improve the Freedom of Information Act.

The Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

S. 2520

### SECTION 1. SHORT TITLE.

*This Act may be cited as the "FOIA Improvement Act of 2014".*

### SEC. 2. AMENDMENTS TO FOIA.

*Section 552 of title 5, United States Code, is amended—*

*(1) in subsection (a)—*

*(A) in paragraph (2)—*

*(i) in the matter preceding subparagraph (A), by striking "for public inspection and copying" and inserting "for public inspection in an electronic format";*

*(ii) by striking subparagraph (D) and inserting the following:*

*"(D) copies of all records, regardless of form or format—*

*"(i) that have been released to any person under paragraph (3); and*

*"(ii)(I) that because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; or*

*"(II) that have been requested not less than 3 times; and"; and*

*(iii) in the undesignated matter following subparagraph (E), by striking "public inspection and copying current" and inserting "public inspection in an electronic format current";*

*(B) in paragraph (4)(A), by striking clause (viii) and inserting the following:*

*"(viii)(I) Except as provided in subclause (II), an agency shall not assess any search fees (or in the case of a requester described under clause (ii)(II) of this subparagraph, duplication fees) under this subparagraph if the agency has failed to comply with any time limit under paragraph (6).*

*"(II)(aa) If an agency has determined that unusual circumstances apply (as the term is defined in paragraph (6)(B)) and the agency provided a timely written notice to the requester in accordance with paragraph (6)(B), a failure described in subclause (I) is excused for an additional 10 days. If the agency fails to comply with the extended time limit, the agency may not assess any search fees (or in the case of a requester described under clause (ii)(II) of this subparagraph, duplication fees).*

*"(bb) If an agency has determined that unusual circumstances apply and more than 50,000 pages are necessary to respond to the request, an agency may charge search fees (or in the case of a requester described under clause (ii)(II) of this subparagraph, duplication fees) if the agency has provided a timely written notice to the requester in accordance with paragraph (6)(B) and the agency has discussed with the requester via written mail, electronic mail, or telephone (or made not less than 3 good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with paragraph (6)(B)(ii).*

*"(cc) If a court has determined that exceptional circumstances exist (as that term is defined in paragraph (6)(C)), a failure described in subclause (I) shall be excused for the length of time provided by the court order.";*