

The language in the bill that this body passed on July 26 on general public use reflects Congress's comfort with the historical application of the general public use requirement prior to the IRS's recent activities, and Congress's intent to remove the uncertainty and risk that the IRS's recent activities have created for the section 42 program.

Mr. BINGAMAN. My understanding, Mr. Chairman, is that the general public use provision in that bill, as passed, clarifies that housing does not fail to meet the general public use requirement solely because occupancy restrictions or preferences that favor tenants with (1) special needs; (2) who are members of a specified group under a Federal program or a State program or policy that supports housing for such a specified group, or (3) who are involved in artistic or literary activities. Is that understanding correct?

Mr. BAUCUS. Yes, the Senator is correct. And for this purpose a special need may relate to the physical facilities of the property, such as a building that offers day care, the services that are to be provided, or the circumstances of the tenants, such as low-income parents attending college. The basic structure of the low-income housing tax credit is based on the premise that the States have the prime responsibility to administer this program, and they have done an excellent job so far. They currently have the responsibility to determine the housing priorities of the State and to give priority to tenant populations with special housing needs. The newly codified general public use rule reinforces the latitude of the States to decide how housing credit dollars are allocated.

Ms. CANTWELL. I thank the chairman for that response and for his work, along with that of the ranking member, on this important issue that would permit housing credit properties to continue to serve special populations provided that the properties satisfy the nondiscriminatory tenant selection criteria and other requirements of the Low-Income Housing Tax Credit Program. I also thank the Senator from New Mexico, Mr. BINGAMAN, for his tireless leadership on this issue.

ACCESS ACT

Mr. BROWNBACK. Mr. President, I rise to speak about S. 3046 and H.R. 6270, the Access, Compassion, Care, and Ethics for Seriously Ill Patients Act or ACCESS Act. The intent of this bipartisan, bicameral legislation is to expand access to investigational treatment options for patients with serious or life-threatening diseases.

A provision of the ACCESS Act provides for three requirements for a patient to become eligible for access to investigational treatments that have completed at least phase one of the

clinical trials process, labeled as compassionate investigational access, CIA. The second of the three requirements provides that a physician document in writing that a seriously ill patient has exhausted all treatment options approved by the Secretary for the condition or disease for which the patient is a reasonable candidate. For this particular provision, the intent of the congressional sponsors of the ACCESS Act is that a patient has examined, not necessarily tried, all Food and Drug Administration-approved treatment options for which the patient is a reasonable candidate.

Accordingly, it is not the intent of the congressional sponsors of the ACCESS Act that a seriously ill patient has tried every combination of treatments for which the patient is eligible before the patient is granted compassionate investigational access or expanded access to the investigational treatment. Moreover, it is not the intent of Congress that the seriously ill patient has exhausted every treatment option for which the patient is a reasonable candidate where a treatment option is known to have severe negative side effects.

The ACCESS Act will ensure that a patient with a serious or life-threatening disease has access to the largest scope of treatment options available to the patient and their doctor. I encourage my colleagues to join me in co-sponsoring this important piece of legislation.

LAKOTA CODE TALKERS

Mr. JOHNSON. Mr. President, during World War II, Lakota, Dakota, and Nakota soldiers from across the Great Plains served this country with honor and distinction as Code Talkers. These men sent messages in code, derived from their native languages, that the enemy was never able to decipher. They saved the lives of countless Americans, were responsible for major military victories, and provided an invaluable service to the United States, but they were sworn to secrecy about their operations in order to protect the code. As a result, their important contributions were not immediately recognized.

Only one of these heroes, Clarence Wolf Guts, survives today. Mr. Wolf Guts spoke Lakota at home, but—like many other Native youth—he was punished for doing so at school. Despite this, he enlisted in the Army at age 18 and served a 3-year tour in the Pacific. Mr. Wolf Guts and his fellow Code Talkers are an example of the proud service record of Native Americans, who make up a higher percentage of service men and women in the Armed Forces than any other ethnic group in America. They have served with honor in all of America's wars beginning with the Revolutionary War on through our current operations in Iraq.

In 2001, the Navajo Code Talkers were awarded Congressional Gold Medals for their service. In appreciation of the service of Mr. Wolf Guts, his comrades, and all Native American Code Talkers, I have cosponsored S. 2681, the Code Talkers Recognition Act of 2008. This legislation would ensure that all Native American Code Talkers which hail from at least 17 different tribes are all recognized and honored for their service.

In recognition of their service, the Rosebud Sioux Tribe and South Dakota State University plan to construct the Code Talkers Memorial Park in Mission, SD. Meant to inspire hope in the community, this park will feature a Memorial Grove of trees found on the home reservation of each soldier and will provide recreation and wellness opportunities as a part of the tribe's ongoing fight against youth suicide.

I want to honor and recognize these men for their service and sacrifice for this country.

FBI'S 100-YEAR ANNIVERSARY

Mr. GRASSLEY. Mr. President, the FBI turned 100 years old on June 26, 2008, and so I want to offer some remarks to mark the occasion. This anniversary is the perfect opportunity to look at the FBI's accomplishments and failures over the past 100 years and its challenges for the future.

During the presidency of Theodore Roosevelt, seven U.S. Secret Service operatives moved to the new Department of Justice Bureau of Investigation to start a new mission. Thus, the FBI was born. The FBI has had countless successes in its first centennial. In particular, the Bureau developed a talented corps of professional agents and staff who pioneered new investigative tools that set most of the standards of modern law enforcement.

The FBI had early successes with the arrests of Al Capone and Gangster "Machine Gun" Kelly in the 1930s. Bonnie and Clyde were also permanently put out of business thanks to some local cops and the FBI. The Bureau later went after the Ku Klux Klan in the 1940s and 1950s. It targeted the New York mafia in the 1980s and 1990s, which led to the decline of the Gambino crime family and its infamous leader, John Gotti.

However, the FBI also has had its share of failures. From its own civil rights abuses in unauthorized wiretapping of civil rights leaders, to the tragedies at Ruby Ridge and Waco, to the internal betrayal by special agent Robert Hansen, there have been many dark days in the history of the Bureau. Still, I am confident that if the FBI is willing to honestly examine its own shortcomings, it can learn the lessons necessary to improve and become more effective at keeping Americans safe and free.

I celebrate with all FBI employees, active and retired, whose difficult and courageous work keeps the rest of us secure.

I also recognize and honor agents who have paid the ultimate price to protect our country from all enemies, foreign and domestic. These heroes deserve praise for their hard work and sacrifice.

The protection of the United States is the FBI's main mission. The FBI is tasked to keep us safe from terrorist attacks, foreign spies, public corruption, infringements on civil rights, organized crime, and major white-collar and violent crime. To serve its mission, the Bureau maintains a worldwide presence in over 400 cities in the United States and 60 countries worldwide.

Since the terrorist attacks on September 11, 2001, the FBI has focused its efforts on antiterrorism. Its intelligence and diligence have protected our Nation from countless threats to our safety. FBI employees have stepped up in these treacherous times, and we count on them every day. They put their lives on the line for our freedom.

We know they are fulfilling their mission when nothing happens to harm us, when we have another day, week, and year free from a terrorist attack and violent crime.

Like any anniversary, this is a good opportunity for us to look at the FBI's failures so it can learn and grow from its mistakes. For years, I have been a watchdog of the FBI's propensity to retaliate against whistleblowers, the Bureau's unwillingness to cooperate with other agencies, and its inability to update its technology system. I hope on its 100-year anniversary, the FBI will turn a new leaf and correct these problems to create a better, safer century ahead.

Parts of the FBI's internal culture hamper its ability to effectively identify and neutralize threats to national safety. For instance, the Bureau has what I have called a "Pac-Man" mentality, because it tries to gobble up whatever it can of other agencies' jurisdiction, evidence, and cases. At times, it has acted like a lunch-stealing bully on the playground.

Our safety would be much better preserved if the FBI would play nice and share jurisdiction and resources with the other agencies. The FBI should concentrate on its primary mission—fighting terrorism—and let other agencies take the lead on investigations in which they have specialized expertise. For example, often, drug and bombing cases should be handled by the Drug Enforcement Administration, DEA, and the Bureau of Alcohol, Tobacco, and Firearms, ATF, respectively.

This Pac-Man mentality is evident by the way the FBI demands access to other law enforcement groups' intelligence, informants, evidence, and resources, and yet it rarely shares its

own information and resources—even after 9/11. For instance, in 2006, Houston Immigration and Customs Enforcement, ICE, agent Joe Webber testified before a House Committee that the FBI purposely delayed a wiretap request in an ICE-headed terrorism financing case, simply because it was an ICE-originated case, rather than an FBI case.

The result of this Pac-Man attitude by the FBI was a missed opportunity to hunt down the perpetrators of terrorist financing in that case.

The FBI has also engaged in jurisdiction grabbing with the ATF over bombing cases and with the DEA over drug cases. Turf wars don't help keep our streets safe, because our limited resources are wasted when programs and investigations are duplicated. Instead of concentrating its resources on anti-terrorism, the FBI has tried to take over investigations in which other agencies have jurisdiction and expertise.

Similarly, the FBI has not always cooperated with other agencies in information-sharing efforts. This reluctance to cooperate is epitomized in FBI agents' turf wars with ATF agents. The Washington Post reported that FBI agents sold counterfeit cigarettes to ATF agents because the two agencies were running twin tobacco smuggling stings.

At crime scenes, the Washington Post reported, agents from each agency threatened to arrest each other over jurisdiction and evidence squabbles. The agencies acted like two dogs fighting over one bone. The problem is that there are plenty of bones out there, and the agencies can each get more if they work together.

Another problem area exists in deciding which agency should investigate domestic bombing incidents. Until recently, the FBI and ATF have been operating under a 1973 memorandum of understanding, which predated and did not anticipate the ATF's 2002 move to the Justice Department from the Treasury. This old agreement failed to take into account the post-9/11 emphasis on searching for terrorism links in bombing cases. With a 35-year-old agreement, it doesn't surprise me that there was so much confusion and squabbling between the two agencies.

I have recently learned that the Attorney General issued a new MOU that will now be the controlling authority between the ATF and FBI in bombing cases.

I am curious to see this new MOU and sincerely hope the FBI and ATF have come up with a better way to resolve disputes regarding which agency takes the lead on domestic bombing cases.

Unfortunately, there is reason to be skeptical that this new MOU will have an impact. A 2004 memo from former Attorney General Ashcroft directed the

FBI and ATF to combine their bomb databases under the ATF's direction, because of the ATF's expertise in bombing cases. However, 4 years after the Attorney General issued that directive, the FBI still has not transferred its bomb database to ATF's management.

Without the ATF's and FBI's cooperation in this area, agents are more likely to be missing key information. I don't blame the agents on the street for this problem. The problem is the direct result of jurisdictional greed and indecision by top bureaucrats at FBI Headquarters. It is imperative that the two agencies work together so that they can keep the country safe.

Notwithstanding these issues, there have been instances of effective cooperation. In 2007, the ATF and FBI cooperated with other law enforcement agencies, and their efforts resulted in the largest prosecution of environmental extremists in U.S. history. Ten ecoterrorists were convicted for politically motivated arson that caused \$40 million in damage. We need to see more of these types of successes, and if the FBI and other agencies can replicate this kind of cooperation in the next 100 years, Federal law enforcement will end up better fighting criminals and terrorists together, rather than fighting against each other.

I have also done oversight of the culture within the FBI which encourages retaliation against whistleblowers. There have been too many cases of continued retaliation against FBI whistleblowers. Any FBI employee who has the courage to come forward to expose corruption or wasted resources in the FBI should be applauded, rather than punished. Not only are these courageous individuals safeguarding our tax dollars, they are also diverting resources from waste to use in the fight against terrorism and crime.

Whistleblowers can spur the FBI to correct its problems. For instance, FBI agent Coleen Rowley went public with insights about the FBI's conduct in the weeks leading up to the 9/11 terrorist attacks. Rowley wrote a letter to FBI Director Robert Mueller in May 2002, outlining how her Minneapolis field office pushed to search Zacharias Moussaoui's home and laptop following French intelligence reports on his connections and activities. But FBI headquarters downplayed the need to get a FISA wiretap and search his home and computer and ultimately denied the Minneapolis field office's request. This was after the FBI got reports that Moussaoui tried to take flight lessons and a Phoenix field agent reported suspicions about Middle Eastern men enrolled in flight school.

After the attacks, Rowley wrote her concerns in a letter to Director Mueller about how FBI headquarters "downplayed, glossed over, and/or mischaracterized" their investigation

of Moussaoui. We don't know what could have been prevented if the Minneapolis office had been able to pursue Moussaoui when it had the chance.

What we know is that whistleblowers play an important role in improving our agencies. On its 100-year anniversary, the FBI should recognize that it needs to listen to those courageous agents who alert them to a problem, rather than retaliate against the messenger.

There continue to be high-profile cases involving discrimination against FBI whistleblowers. For instance, just over a month ago, FBI agent Bassem Youssef came forward and testified before Congress about staffing deficiencies in the counterterrorism program of the FBI. Without his testimony, Congress would not have known that the FBI is having trouble filling those critical positions. Yet, just 2 days after testifying, agent Youssef was accused of violating FBI regulations. The FBI dropped its allegations, but I am not willing to drop the subject. I sent a letter, along with House Judiciary Committee and subcommittee chairmen, demanding the FBI turn over its records to determine what happened. The FBI has not responded. The FBI should have a system that encourages concerned agents to come forward and identify problems that can then be solved, rather than swept under the rug. It should not use whistleblowers as "canaries in coal mines," to be sacrificed as soon as they alert us to a problem.

Another problem the FBI must correct is the different standard of punishments it sets for agents versus their supervisors. While a supervisor may get a slap on the wrist for misconduct, an agent may be heavily reprimanded. For example, agent Cecilia Woods reported that her supervisor engaged in illicit sexual activities with a paid informant. Her courage and honesty in reporting this improper activity were rewarded with two investigations into her own conduct, suspensions, and a transfer.

Meanwhile, senior level FBI agents are treated differently for their misconduct. For instance, acting special agent in charge in Baltimore, Jennifer Smith-Love, was investigated, along with two agents acting under her direction, for conducting an unauthorized search of another agent's computer.

However, Smith-Love's investigation was classified as a performance issue, rather than a misconduct issue. While the investigation was still ongoing, she got a promotion. The disparate treatment of agent Cecilia Woods and special agent in charge Jennifer Smith-Love illustrates how the FBI reprimands its agents much more harshly than it reprimands supervisors.

This unequal treatment of agents and senior management is unfair and creates an appearance of double standards

at the agency. Double standards in discipline devastate morale among the dedicated, hardworking FBI agents who are just trying to do their job. The FBI should set more uniform guidelines for punishments for both agents and supervisors.

Another area the FBI needs to improve is its implementation of information technology upgrades. For years, the FBI has been charged with the task of bringing its computer systems up to date. However, despite spurts of progress, this effort has been hobbled by embarrassment and setback.

The FBI had to scrap a \$170 million case management system called Virtual Case File in 2005. The Virtual Case File system was scrapped because it failed before it ever got rolling. VCF was poorly designed and poorly managed, and to make matters worse, the FBI placed little internal controls on the oversight of the project. To date, the FBI still has not completed a new version of the system, now known as Sentinel. Information technology needs to be a top priority for the FBI if it wants to effectively hunt down and disrupt terrorist cells around the globe. The situation could not be more urgent, and the FBI needs to step up and get the job done, on time and on budget.

It is also important to note that the FBI's budget has tripled since 1999. Last year, Congress appropriated almost \$7 billion dollars to the Bureau. We should not tolerate the FBI's continued mismanagement of public funds on programs that don't work. The American taxpayers can not afford another Virtual Case File.

Technological advances are important tools to keep up with dangerous terrorists and criminals. As terrorists and criminals use more advanced technology to evade detection, the FBI needs to stay ahead of them with new technologies to fight them without delays or setbacks. Americans are counting on a system that works to help prevent the next terrorist attack.

Congress plays an important oversight role over the FBI and other agencies. I take this role very seriously, as it is crucial to our system of checks and balances. At this 100-year juncture, I encourage the FBI to step up to the plate to make positive changes in its agency.

Congress also has a role to play in the future of the FBI. In the 107th and 108th Congresses, legislation was introduced to reform the FBI to protect whistleblowers and provide true accountability. Unfortunately, these reforms were never fully enacted into law. We should revisit these efforts to help the Bureau be the best it can be.

I also believe that Congress needs to continue to examine the FBI's counterterrorism mission and look at the calls some have made to split the FBI's law enforcement and domestic intelligence

functions along the lines of the British MI-5. Now some may see my statement as a call to dismantle the FBI, that is not what I am saying. What I do believe is that our constitutional duty to conduct oversight includes a soup-to-nuts review of our law enforcement policies, including whether or not those at the FBI are achieving their primary mission. I think there is merit to arguments on both sides and believe we should spend some of our time looking into this. To summarize, I thank FBI employees, past and present, for their collective past 100 years of service. I also challenge the FBI's management to grab ahold of the reins to build a stronger, more accountable, transparent, and effective FBI. I challenge the FBI's leadership to recognize and correct the problems it currently has so the Bureau can be the top notch law enforcement agency it can be.

Now is an ideal time for the agency to look back on what it has done right and wrong and work to do a lot better in the future.

IDAHOANS SPEAK OUT ON HIGH ENERGY PRICES

Mr. CRAPO. Mr. President, in mid-June, I asked Idahoans to share with me how high energy prices are affecting their lives, and they responded by the hundreds. The stories, numbering over 1,000, are heartbreaking and touching. To respect their efforts, I am submitting every e-mail sent to me through energy_prices@crapo.senate.gov to the CONGRESSIONAL RECORD. This is not an issue that will be easily resolved, but it is one that deserves immediate and serious attention, and Idahoans deserve to be heard. Their stories not only detail their struggles to meet everyday expenses, but also have suggestions and recommendations as to what Congress can do now to tackle this problem and find solutions that last beyond today. I ask unanimous consent that today's letters be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

I strongly urge you to fully and aggressively support legislation that extends the tax credits for renewable energy sources. This legislation has been defeated in Congress 3 times in the past year! This is unimaginable and pathetically short-sighted. Solar and wind power generation and the like generates hundreds of thousands of jobs and it is critical that companies expanding these industries be supported in their early stages.

BRIANT.

Thank you for asking! I am disabled and living on Social Security (\$784 per month). It is not a lot, but I had managed to live within my means for a short while and still have some kind of interaction with my church and family.

I will start my story from the time I became disabled and had to leave my employment with the Environmental Protection