

a nonprofit children's advocacy group, recently joined his effort to leverage those cases into a multi-million-dollar overhaul of the state's child welfare system.

"In my own small-town way I said, 'Look, you can move these children as often as you wish, but if you do, you're going to have to pay for the damages you do to them,'" Mr. Farris said, "and it's going to be cheaper to treat them right."

Few suggest this kind of litigation is a shortcut either to riches or to an overhaul of the state programs that are trying to care for 600,000 children outside their homes. State agencies typically can only be sued for compensation, not punitive damages, and they can make it daunting in time and money to unearth confidential records needed to prove a case and collect. The \$4.4 million Florida verdict is on hold pending an appeal.

But at a time when child-friendly policies figure prominently in election campaigns, the political potency of such cases may outweigh the legal drawbacks, said John Coffee, a professor of law at Columbia University. "Plaintiffs' lawyers have learned that the class action can be very, very useful when the state agency has some vulnerability," he said.

The vulnerability of government agencies has grown considerably in some states. Jeff Freimund, as assistant attorney general for Washington, said courts there had rejected legislative caps on negligence awards, and government payouts in civil cases in general have quadrupled in six years, to \$38 million in the last three months alone.

"The courts have opened the door to litigation on child welfare activities," Mr. Freimund said. "They're very difficult cases to defend in front of juries because juries often have the benefit of 20-20 hindsight."

Some officials, including Kathleen A. Kearney, the secretary of the Florida Department of Children and Families, say such litigation unfairly detracts from continuing efforts to improve child welfare, diverting resources that legislatures, not courts, should control. But others, frustrated at the persistence of problems documented and denounced for 20 years, welcome the new strategy.

"Money talks, and money makes policy," said Jean Soliz, who headed Washington's Department of Social and Health Services for three years, until 1995. She recalled that state legislators made all the right speeches during her tenure, but put \$30 million into a new sport stadium rather than provide court advocates or mental health care for Washington's 11,000 foster children. Today, fewer than half have an advocate in court proceedings, and more than a third have been moved through three or more foster homes, studies show.

"The torts give you leverage to make them take it seriously; the torts don't fix anything," said Ms. Soliz, who now directs the spending of a tobacco tax earmarked for children in Nevada County, Calif. She emphasizes the importance of enlisting national advocacy groups that can draw on lessons from court consent decrees they have won in suits against child welfare systems in at least 20 states.

Bill Grimm, a lawyer with the National Center for Youth Law, said groups like his had become more open to alliances with personal injury lawyers because conventional strategies had run into obstacles. While Congress has enacted tougher foster care requirements—foster care time limits, for example, are now set at a year rather than 18 months—federal judges in some states have recently made it harder for children to seek enforcement of those laws in federal court. Their rulings hold that Congressional re-

quirements intended to protect foster children do not constitute rights.

We are at a bit of a crossroads," Mr. Grimm said.

Even in states already operating under sweeping settlements, damage suits are playing a more prominent role. In New York City, where an ambitious child welfare consent decree imposed a moratorium on new class-action lawsuits, the Administration for Children's Services has paid hundreds of thousands of dollars in settlements to fathers who were not notified that their children were in foster care. And city lawyers are negotiating to settle a multi-million-dollar lawsuit over a toddler who was beaten to death by foster parents with a known history of abuse.

But there are perils to trying to turn such cases into a broader crusade in the absence of national allies or deep pockets, said Lawrence Berlin, an Arizona lawyer who has won settlements averaging \$250,000 for a dozen children sexually abused in foster care. His motion to turn the cases of some children into a more powerful class action was denied in federal court after six years of litigation that consumed his practice, he said. The state rejected his offer to settle for systemic changes.

"I'm not saying children haven't been abused," said Tom Prose, an assistant Arizona attorney general in charge of liability cases, who emphasized that the current administration had made child protection a top priority. "The issue is, is it pervasive and are we ignoring it? And my answer to you is, in Arizona, it's neither."

In Florida, where the number of children in foster care has nearly doubled since 1998, to 15,000, the class-action suit contends that foster children are now in greater danger of emotional and physical injury from the state than from the families from which they were taken.

"We had a toddler in a foster home so overcrowded the kid spent the weekend strapped into a car seat," said Marcia Robinson Lowry, the director of Children Rights, a national advocacy organization based in New York, which recently joined the Florida class action.

Among the companion damage suits in Florida are some that highlight the harm flowing from one bad foster home, that of a couple in Hillsborough County. After the couple were arrested in May on 40 felony charges of child abuse and neglect, it emerged that the state had entrusted them with 28 foster children over four years, even as caseworkers recorded their abusive practices.

"My brother has severe problems because of what happened in that home," said Ashley Rhodes-Courter, now 14, who entered foster care at 3 because of her mother's drug problems, and endured 14 placements. She was 7 and her brother 4 during their year in the couple's home.

"He was abused," she said. "He had hot sauce put on his tongue; he was dunked in a bathtub until he was nearly drowned. It was very frightening to watch someone you love being mistreated and you being able to do nothing about it."

For Ashley, a resilient and academically gifted child, there was a happy ending. A family with the love, money and persistence to extract her from the system adopted her in 1998. But her brother, who entered foster care at birth, lives in a treatment center, still waiting for a family capable of coping with the damage he suffered. He is one of 22 plaintiffs in the class action.

Separately, he and Ashley are plaintiffs in damage suits brought or planned against the state on behalf of all the Hillsborough County couple's former foster children, including

the 23 that the state has refused to identify, and 8 the couple adopted with state subsidies who are now back in the foster care system.

Proponents of double-edged litigation say that even if institutional change remains elusive, at least financial help can be won for a few of the children the system has wronged—children like the two Florida sisters, now 17 and 18, who are both literate and both mothers.

"You all hurt me all my life," the older sister told officials in a deposition last year, declaring her determination to keep her own baby daughter out of foster care. "I hate every last one of you."

The PRESIDING OFFICER. The Senator's time has expired.

Mr. REID. Mr. President, parliamentary inquiry. If the bill has not come from the House by the time the Senator from Iowa completes his statement, I ask unanimous consent that the Senator from New York be recognized for 10 minutes. He has been waiting for most of the morning.

The PRESIDING OFFICER. Without objection, it is so ordered. The majority has 5 minutes remaining.

Mr. GRASSLEY. Mr. President, I believe morning business is going to expire at 10:30. Do I need to ask unanimous consent to extend morning business?

The PRESIDING OFFICER. The situation is that the majority has an additional 5 minutes for morning business, after which the Senator from New York will be recognized for 10 minutes.

ADOPTION TAX CREDIT

Mr. GRASSLEY. Mr. President, I come to the floor today to discuss a critical issue: adoption of children with special needs. I appreciate the work of my Senate colleagues who cochair the Congressional Coalition on Adoption, Senators CRAIG and LANDRIEU. I thank them for their dedication in furthering adoption. Both have demonstrated their commitment to adoption through word and deed. I respect their efforts and look forward to working with them in the coming years to increase adoptions and to improve the lives of vulnerable children.

The adoption tax credit which passed in 1996 was a step in the right direction. It provided a 5-year credit for adoptions of nonspecial needs children. It provided a permanent credit for adoptions of children with special needs. I commend Senator CRAIG for his efforts to extend the provision relating to nonspecial needs adoptions. As Senator CRAIG mentioned on the floor earlier today, while extending the credit is another step in the right direction, we must not rest on our laurels. There is more to be done especially as it relates to adoption of special needs children. The cost of adoption varies widely. Private or international adoptions can cost as much as \$30,000 per child. In contrast, adoptions from foster care are often subsidized by the government.

Parents who choose to adopt a child from foster care or through a public

agency incur little, if any, expenses related directly to the adoption process. However, they incur a great deal of "incidental" expense related to adoption. The adoption tax credit is available only for "adoption related expenses" which include necessary adoption fees, court costs, and attorneys' fees. This limitation works directly to the disadvantage of families adopting children with special needs, because the credit does not recognize the overwhelming indirect expenses associated with adopting such a child. These expenses might include fitting the home with a ramp for a wheelchair bound child, to cite one example.

When Congress passed the tax credit in 1996, it also directed the U.S. Department of the Treasury to issue a report on the effect of the credit. According to the Treasury report released this month, for tax year 1998, 77,000 adoptions were eligible for a tax credit—31,000 for special needs and 46,000 for non-special needs adoptions. However, of the 31,000 eligible special needs adoptions, only 4,700 received benefits from the tax credit. Compare that with 45,700 of the eligible 46,000 adoptions of non-special needs children that received benefits from the tax credit.

Let me put it another way. The Treasury Department reports 15 percent of eligible special needs adoptions received tax benefits compared with 99 percent of eligible non-special needs adoptions which received tax benefits for 1998. For those wondering why so few special needs adoptions benefited from the tax credit in 1998, here is one reason. Average expenses—allowed by current law—were reported for tax year 1998 as \$3,540 per special needs adoption and \$5,890 per nonspecial needs adoption. When you look at these expenses, it is clear that increasing the amount of the tax credit for special needs adoptions will have little to no impact on families seeking to adopt special needs children.

I view this as one of the flaws in current law that must be fixed. Let me be clear: I support the extension of the tax credit for non-special needs adoption. I also support taking a hard look at how the current tax credit impacts special needs adoptions. I urge my colleagues to consider the impact of the tax credit on families adapting special needs children. Again, I commend Senators CRAIG and LANDRIEU for their efforts on behalf of vulnerable children.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, I would like to associate myself with the remarks of my friends from Iowa and Louisiana on this matter. The Finance Committee is very much concerned with and for this legislation. It will become law.

SENATOR ROBERT F. WAGNER

Mr. MOYNIHAN. Mr. President, I rise for the pleasant purpose of noting the

decision by the Committee on Rules to add two names to that very special group that is portrayed in our reception room—six of the most distinguished Senators in our history. We have now added two—or shortly will have done so—Senator Arthur Vandenberg of Michigan and Senator Robert F. Wagner of New York.

The story of Robert F. Wagner is a quintessential and essential one, describing the life of a poor immigrant child born on the east side of New York, who, by steady succession made his way to this Chamber. In the process, he changed the United States, recognizing, at long last, that we had become an urban Nation with needs, in legislative terms, that such a transformation requires.

The census of 1920 determined, for the first time, that the majority of Americans lived in urban areas—rather loosely defined, but still—and intensely so on the island of Manhattan. It may seem difficult to believe, but in 1910, the population of Manhattan was twice what it is today, and the conditions were difficult indeed.

Yet there was a degree of social order, a very powerful and progressive political organization, Tammany Hall, which dates from the Revolutionary War days. Aaron Burr was the head of Tammany at one point. And in the person of Charles Francis Murphy, it became unexpectedly, but unmistakably, the single most powerful source of progressive ideas for social legislation in our history—ideas that became law that changed lives.

Perhaps the critical event was the Triangle Shirtwaist Fire of 1911. In downtown Manhattan, there were women in a sweatshop, as we would call it. A fire broke out. The doors were locked. They were left to leap from eighth-story windows. And the city never got over it. Frances Perkins, having tea in Gramercy Park, five blocks away, never got over it. But it was Robert Wagner and Al Smith who did something about it.

They had gone to Albany under the auspices of their district leaders, big Tom Foley in the case of Al Smith, from the lower east side, and McCordle from the upper east side.

Smith became speaker of the assembly; Wagner, President pro tempore of the Senate.

They chaired together a commission on the Triangle Shirtwaist fire. They came out with legislation calling for safety and sanitary conditions, restricting child labor, limiting the hours of working women and protecting the activities of trade unions—events which never before appeared on the legislative calendar of any State legislature, much less the Congress. And they passed.

Smith went on to become Governor of New York and created, with his company, a legislative agenda which Franklin D. Roosevelt, who succeeded Smith as Governor, would take to Washington. We call it the New Deal.

Wagner had already arrived in Washington and was well positioned to take up his work, beginning with the National Industrial Recovery Act in 1933, and, in 1935, the defining Wagner Act, which is technically the National Labor Relations Act. It created the National Labor Relations Board and gave labor unions a right to exist and to be heard and not to be harassed.

He went on under President Truman. He allied himself with Robert Taft, and the first major housing legislation passed this body. Then health care was proposed by Wagner, with Truman's support. A half century has gone by, and we are still dealing with that issue. But it is well that we recognize the person—a person, not the only one—who singularly brought this matter to the nation's agenda.

I, as a New Yorker, am pleased, as all New Yorkers will be. I hope Senators will recognize that a just and honorable choice has been made. I am a member of the Rules Committee so it would not be appropriate to congratulate the Rules Committee, but I certainly thank the chairman and the ranking member, Senators McCONNELL and DODD.

I see my friend from New Mexico is on the floor, and I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I don't know the parliamentary situation. I need 3 minutes.

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

THANKING SENATOR MOYNIHAN

Mr. DOMENICI. Senator MOYNIHAN, I was listening to your speech on the television set before I arrived on the floor. First, I thank you for what you said this morning. It is something we ought to hear, something that ought to be placed permanently in our RECORD. And that is what happened.

I personally want to say to you, over the years in my work as Budget Committee chairman and other legislation, I have found you to be a real friend. I think that is more important than talking about what you did here in terms of this Senator. I can remember, believe it or not, when we produced a most difficult budget, and it looked like a pretty good budget. I was wondering whether it would pass. I had the votes counted. All of a sudden, I won by one more vote than I thought. As he walked out, he put his hand on my shoulder and said: You did a great job. I voted for you.

Now, we have talked a lot about other things, including you have asked me regularly about my wonderful family and my beautiful wife Nancy. I thank you for that concern.

I guess in the remaining time I want to say to you, there are many ways to be a great Senator. Sometimes you become a great Senator because you get a lot of big headlines. Sometimes you become a great Senator when you promote yourself, which is permitted