

Secretary for Indian Affairs, U.S. Department of the Interior; to be followed immediately by a business meeting to consider pending committee business.

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

COMMITTEE ON THE JUDICIARY

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on Wednesday, October 22, 2003, at 10 a.m., on "Judicial Nominations," in the Hart Senate Office Building room 216.

Witness List:

Panel I: Senators.

Panel II: Janice R. Brown to be United States Circuit Judge for the District of Columbia Circuit.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. CORNYN. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, October 22, 2003 at 2:30 p.m. to hold a closed hearing.

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

SUBCOMMITTEE ON OCEANS, FISHERIES, AND COAST GUARD

Mr. CORNYN. Mr. President: I ask unanimous consent that the Subcommittee on Oceans, Fisheries, and Coast Guard be authorized to meet on Wednesday, October 22, 2003, at 9:30 a.m., on Fisheries Oversight to be held in SR-428A.

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

PRIVILEGE OF THE FLOOR

Mr. HATCH. I ask unanimous consent that Sandra Wilkinson, a detailee to the Democratic staff and the Senate Judiciary Committee, be granted full floor privileges for the remainder of the debate on the CAN-SPAM Act of 2003.

UNANIMOUS CONSENT REQUEST—  
H.R. 7

Mr. FRIST. I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 7, the charitable choice bill. I further ask unanimous consent that all after the enacting clause be stricken, that the Snowe amendment and the Grassley-Baucus amendment, which are at the desk, be agreed to en bloc, that the substitute amendment, which is the text of S. 476, the Senate-passed version of the charitable choice bill as amended by the Snowe and Grassley-Baucus amendments be agreed to, that the bill, as amended, be read the third time and passed, that the motion to reconsider be laid upon the table; further, that the Senate insist upon its amendments and request a conference with the House, and last, that the Chair be authorized to appoint conferees with a ratio of 3 to

2, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, for the reasons previously stated in regard to this legislation at least on two or three separate occasions, I would reiterate those and object.

The PRESIDING OFFICER. Objection is heard. The majority leader.

WORK OF THE SENATE

Mr. FRIST. Mr. President, I wish to take a moment to congratulate Chairman MCCAIN and Senator BURNS and others who have fought so hard for the anti-spam legislation that passed not too long ago tonight.

Although I am disappointed we have not been able to proceed to conference on the CARE Act, I am very hopeful that ultimately we will be able to do that and I am very hopeful we will at some point receive unanimous consent to do just that.

Today's vote, 97 to 0, on the anti-spam legislation, reflects a lot of the hard, bipartisan work—both sides of the aisle—that was put into the anti-spam bill. I do thank all of our colleagues who have worked so diligently on this legislation.

We started on this bill about 2 o'clock today and we had final passage 4½ hours later. I am very hopeful we can continue with this sort of efficient movement on the floor of the Senate for the remaining issues we have this year.

We do continue to work toward an agreement on a range of issues. They include Healthy Forests and the Internet tax moratorium, which is currently being worked on.

The CARE Act, as my colleagues can tell, continues to be a challenge, but I hold out the hope that we will be able to send that bill to conference. Senator RICK SANTORUM has done just a superb job in shepherding that bill through the Senate. The companion bill has passed the House of Representatives, and indeed it is time to address it in the conference.

We are also looking toward an agreement on fair credit reporting which does have strong bipartisan support in this body. There are very few objections. I hope we can take care of that in short order. We will continue to push very hard for that particular bill.

Also today, we addressed an issue on which we can't give up. We can't really accept as the final punctuation mark the outcome of the vote today where we had 59 Senators say it is time for us to solve the class action challenge before this body. We didn't have 60 Senators. We had 59—1 short. If we had just one other colleague come forward and say, yes, this is a problem for the American people, it is a problem for our economy, it is a problem for our families, we would have been able to proceed with class action reform.

I want to take a couple of minutes and comment, because I didn't have the

opportunity earlier today, on the importance of class action reform. I should preface that by saying that just yesterday I came to the floor to talk about my upbeat optimism for really the first time in the last several months with regard to our economy.

That is in part for having traveled around the country this past weekend and talked to a lot of people in various occupations and various jobs. You can just see and sense and you can feel that increased consumer optimism that is around the country.

Indeed, we had some very good economic numbers, some of which I mentioned yesterday. The Department of Commerce reported that consumption is strong in this third quarter. Consumption grew by an annualized rate of over 12 percent. Many economists say this third-quarter consumption may be the strongest in almost 4 years.

New housing starts are annualized to be about 1.9 million based on the results from last month. That is probably the highest in terms of housing starts in the last 17 years. Production from our factories increased 3.5 percent in this quarter. It had been negative the quarter before that. The Department of Labor also delivered the report that initial jobless claims are at their lowest levels since February and that in August the nonfarm sector employment rose by 57,000 jobs.

All of that I think is very encouraging news. As these economic indices continue to improve, with some lag time, that is translated into increased jobs. But that is not enough. We have a lot we can do and we should be doing on the floor of Senate. We need to have smart progrowth fiscal policies because we know that helps create jobs. It gives job security for those who are currently working.

I am optimistic that we are going to see this continued improvement in the economy, but equally importantly in job creation.

The sort of structural problems we need to address: Taking action on class action reform. Class action lawsuits are a problem. What makes it even more important for us to address now is it is a problem that is getting worse with time. A recent survey found that State court class action filings skyrocketed by 1,315 percent in just 10 years. The result of this glut of claims—many unnecessary, many frivolous claims—is that it clogs the State courts, it wastes taxpayer dollars, and it inhibits innovative in entrepreneurship that we all know is so crucial to job growth. All the purported victims ever get in this sordid process is a little coupon—a measly little coupon. I say that not just figuratively but literally.

A couple of examples:

In a suit against Blockbuster, plaintiffs' lawyers alleged that their clients were being fleeced by excessive late fees. They sued the video rental chain for restitution. The result was that each of their clients received a \$1 coupon offer for future rentals while the

lawyers at the same time pocketed over \$9 million. What is interesting is that, meanwhile, Blockbuster was allowed to continue that same late fee practice that the lawsuit was ostensibly launched to end—\$9 million to the lawyers and a \$1 coupon—but the practice continued.

You say that is outrageous and it couldn't be. It is a fact.

Another anecdote and equally outrageous had to do with Coca-Cola and apple juice. What happened a few years ago was the plaintiffs' lawyers charged that the Coca-Cola drink company was improperly adding sweeteners to its apple juice. These plaintiffs' lawyers, who were parading as vigilant deans of public health, managed to secure—yes, once again—a 50-cent coupon for the apple juice victims but the lawyers received \$1.5 million.

If you think that is outrageous, in a class action suit against the Bank of Boston plaintiffs actually lost money when their accounts were drawn down to pay their lawyers \$8.5 million in fees.

That is large business. Also, these large suits have a direct impact on small businesses. These small businesses get drawn into this feeding frenzy that is going on around the country. What happens is that in order to avoid going to Federal court, the class action legal team will rope in local small businesses in the area as codefendants in order to get that case decided in—it may be an adjacent county or an adjacent State—a favorable State. Once the window during which the real class action target can remove the case to the Federal court closes, that unlucky mom-and-pop shop that happened to be in the wrong county or the wrong town at the wrong time is dropped from the case, but not before they have had to invest considerable sums of money in this process of defending themselves.

Such lawsuits are frivolous. Such lawsuits are unnecessary. They are wasteful and they translate into a burden on our economy, a burden on our judicial system, a burden on taxpayers, and clearly a burden on the practice of law. Who can help but be cynical about a system which we have today that awards lawyers millions of dollars over an apple juice sweetener dispute?

So this can't go on. Too many of these lawsuits are little more than operations which shake down these small businesses or these large businesses.

Oftentimes the lawyers are counting on the company to pay a sizable settlement just to avoid that higher cost of going to court. Companies—whether big or small—should no longer be subjected to this blackmail, which is wrong and unfair. It needs to stop.

Today, we tried to take this issue to the floor of the Senate so it could, once and for all, be addressed. Indeed, a majority—it was a bipartisan majority—of Senators said, yes, it is a problem; yes, it deserves to be debated in the Senate; yes, several may have wanted to amend it; yes, it is time to address this issue

which is a burden on the taxpayer. It is a burden on working men and women. It is a burden on small businesses. It is a burden on families.

That was a majority. But in this body it takes 60 votes, not just a majority, 60 of 100 Senators to say, yes, we are going to address that. We only had 59.

I hope my colleagues will come back to the table. As majority leader, I promise I will stay on this issue until we have it resolved. It may take constituents around the country saying, yes, it is important to call Senators, to talk to Senators and encourage Senators in town meetings, to say, yes, it is important to address this problem.

I hope my colleagues recognize the significance of this issue to our economy and to working families.

If one more person came forward, we would be able to address this once and for all. That would be good for the country. It would be good for the law. It would be good for the economy. And it is good for the legitimate claims that are out there and should be fairly and appropriately settled.

#### DIRECT SUPPORT PROFESSIONALS RECOGNITION

Mr. FRIST. I ask unanimous consent the HELP Committee be discharged from further action on S. Con. Res. 21 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 21) expressing the sense of the Congress that community inclusion and enhanced lives for individuals with mental retardation or other developmental disabilities is at serious risk because of the crisis in recruiting and retaining direct support professionals, which impedes the availability of a stable, quality direct support workforce.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. FRIST. I ask unanimous consent the amendment at the desk be agreed to, the concurrent resolution, as amended, be agreed to, the amendment to the preamble, which is at the desk, be agreed to, the preamble, as amended, be agreed to, the motion to reconsider be laid upon the table, and any statements regarding this matter be printed in the RECORD.

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

The amendment (No. 1897) was agreed to, as follows:

##### AMENDMENT NO. 1897

In section 2, strike "ensure" and insert "promote".

The concurrent resolution (S. Con. Res. 21), as amended, was agreed to.

The amendment (No. 1898) was agreed to, as follows:

##### AMENDMENT NO. 1898

In the first whereas clause of the preamble, before the semicolon, insert "including

mental retardation, autism, cerebral palsy, Down syndrome, epilepsy, and other related conditions".

Strike the second whereas clause of the preamble.

Strike the eighth whereas clause of the preamble.

Strike the ninth whereas clause of the preamble.

The preamble, as amended, was agreed to.

The concurrent resolution, as amended, with its preamble, as amended, reads as follows:

##### S. CON. RES. 21

Whereas there are more than 8,000,000 Americans who have mental retardation or other developmental disabilities, including mental retardation, autism, cerebral palsy, Down syndrome, epilepsy, and other related conditions;

Whereas individuals with mental retardation or other developmental disabilities have substantial limitations on their functional capacities, including limitations in two or more of the areas of self-care, receptive and expressive language, learning, mobility, self-direction, independent living, and economic self-sufficiency, as well as the continuous need for individually planned and coordinated services;

Whereas for the past two decades individuals with mental retardation or other developmental disabilities and their families have increasingly expressed their desire to live and work in their communities, joining the mainstream of American life;

Whereas the Supreme Court, in its *Olmstead* decision, affirmed the right of individuals with mental retardation or other developmental disabilities to receive community-based services as an alternative to institutional care;

Whereas the demand for community supports and services is rapidly growing, as States comply with the *Olmstead* decision and continue to move more individuals from institutions into the community;

Whereas the demand will also continue to grow as family caregivers age, individuals with mental retardation or other developmental disabilities live longer, waiting lists grow, and services expand;

Whereas outside of families, private providers that employ direct support professionals deliver the majority of supports and services for individuals with mental retardation or other developmental disabilities in the community;

Whereas direct support professionals provide a wide range of supportive services to individuals with mental retardation or other developmental disabilities on a day-to-day basis, including habilitation, health needs, personal care and hygiene, employment, transportation, recreation, and housekeeping and other home management-related supports and services so that these individuals can live and work in their communities;

Whereas direct support professionals generally assist individuals with mental retardation or other developmental disabilities to lead a self-directed family, community, and social life;

Whereas private providers and the individuals for whom they provide supports and services are in jeopardy as a result of the growing crisis in recruiting and retaining a direct support workforce;

Whereas providers of supports and services to individuals with mental retardation or other developmental disabilities typically draw from a labor market that competes with other entry-level jobs that provide less physically and emotionally demanding work,